THE NAYAR REGULATION AMENDMENT BILL.

Clause 19.

PRESIDENT: We are at Clause 19 of the Nayar Regulation Amendment Bill.

The following amendments were not moved:—

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*):

Lines 1 and 2. Delete "the whole of the" and substitute "one-half of her."

Line 3. Add at the end after "thavazhee", the words "and the other half on her husband."

MR. A. GOVINDA MENON (*Alangad* cum *Parur*):

Line 1. Delete the words "the whole" and substitute the word "one-half".

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*):

Line 1. Delete the words after "her" in line 1 and substitute instead.

"One-half of the self-acquired or separate property left undisposed of by her at her death shall devolve on her mother's thavazhee and the other half on her husband."

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*):

Line 1. Substitute the words "one-half of the self-acquired and separate property left undisposed of by her shall devolve on her husband and the other half on her mother's thavazhee, for the words "the whole of the self-acquired.....thavazhee".

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*):

Line 1. Substitute "one-half" for "the whole".

Line 3. Insert the words "husband and the other half on her" between "her" and "mother's".

MR. M. N. PILLAI (*Trivandrum*):

Lines 1, 2 and 3. Substitute the words "one-fourth of the self-acquired and separate property left undisposed of by her at her death shall devolve on her husband if alive and the rest on her mother's thavazhee" for the words "the whole of the self-acquired.....thavazhee".

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Add at the end of the Clause the following:—

"And the other half on her husband; but, in the absence of either the husband or the mother's thavazhee, the other shall take the whole".

The question that Clause 19 do form part of the Bill was then put to the vote of the House and carried.

Clause 19 was added to the Bill.

Clause 20.

MR. N. KUMARAN (*Nominated*): This amendment is in consequence of my amendment to Section 19 which was negatived. The amendment is now unnecessary and so I do not move it.

The following amendments were not moved:—

MR. N. KUMARAN (*Nominated*): Substitute the following for Clause 20:—

"On the death of a Nayar female leaving her surviving none of the heirs mentioned in Sections 18 and 19, the self-acquired and separate property left undisposed of by her at her death shall devolve on the thavazhee of her grandmother or on the thavazhee of her more remote female ascendants, the nearer excluding the more remote."

MR. A. GOVINDA MENON (*Alangad* cum *Parur*):

Line 2. Delete the word "her husband and".

Line 3. Delete the word "one-half" and substitute the words "the whole".

Line 4. Delete the words "her husband and the other half on".

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[Mr. M. Raja Raja Varma.]

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*):
Line 2. Delete the words "her husband and".
Line 3. Delete "one-half of the" and substitute "the whole of her".
Line 4. Delete "on her husband and the other half".

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*):
Lines 1 and 2. Delete the words "none of the heirs mentioned in Sections 18 and 19, but".

MR. A. GOVINDA MENON (*Alangad* cum *Parur*):
Lines 6 and 7. Delete.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*):
Lines 6 and 7. Delete.

The question that Clause 20 do form part of the Bill was then put and carried.

Clause 20 was added to the Bill.

Clause 21.

The following amendments were not moved :—

MR. N. KUMARAN (*Nominated*):
Delete the Clause.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*):
Line 4. Substitute the words "and in its absence" for the word "or".

The question that Clause 21 do form part of the Bill was then put and carried.

Clause 21 was added to the Bill.

Clause 22.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): With regard to Clause 22 there are a number of amendments tabled, out of which one is in my name and it is more fundamental than any of the other amendments proposed. So I would like to have permission to move that amendment first.

PRESIDENT: Yes, you may do so.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I beg to move that the following be substituted for the existing Clause 22:

"On the death of a non-Nayar male leaving him surviving a Nayar widow or children or both, they shall have a claim for maintenance out of the self-acquired and separate property left undisposed of by him at his death, such maintenance being given to the widow only so long as she remains unmarried and to the children so long as they are minors".

Sir, in commending this amendment for the acceptance of the House, I shall explain briefly my reasons for doing so. Firstly, under no law of inheritance does property descend outside the community of the deceased. The Smritis recognise the marriage of a Brahmin in all the four *varnas*; but descent goes only to his issue within the caste; other issues have only a right of maintenance. And why is it so? Because inheritance carries with it certain obligatory religious duties.

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You may hold that there is no logical connection between inheritance and religious duties and that their coincidence is only an accident. The position may probably be argued theoretically. But facts are stern and cannot be ignored. As night follows day, inheritance among Hindus follows the performance of the deceased's obsequies. You may call it in the language of the logicians 'invariable concomittance.' But there it is, and it cannot be blinked. There are instances in which even a member of a different family becomes an heir by the performance of the deceased's funeral rites. Here is a crucial instance of the necessary connection of inheritance with religious rites. This distinguishing trait gives inheritance a peculiar significance from a mere provision for prospective maintenance. While I admit that it is no more than elementary justice to provide for one's wife and children, to whatever community or sect they may belong, so long as they retain that status, I am unable to agree to the proposition that, so long as they are incompetent to perform the religious rites of the deceased or participate therein, they could claim any inheritance.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether it is the fault of the wife and children that they are not competent?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): It is the fault of the custom and the usages probably.

Inheritance, as an eminent author says, is an unearned increment. If human labour is the ultimate standard of the value of wealth, inheritance can be justified only on the ground of the spiritual duties imposed on the heir for the deceased. It cannot be claimed by those who are by immemorial custom incompetent to perform such duties.

MR. C. SANKARA MENON (*Quilon*): May I know whether according to the marumakkathayam law any person inherits property by the performance of any funeral rites of another marumakkathayee?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Exactly; it is by performance of funeral rites. Under the marumakkathayam law it is the nephew who performs the funeral rites.

MR. C. SANKARA MENON (*Quilon*): Does inheritance follow the performance of the funeral ceremony?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): That is exactly so.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I know whether the State, because it takes the property by escheat, performs the funeral rites of a deceased person leaving no heirs?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): That does not come under inheritance. It is a question of escheat.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): May I know whether in the whole range of Hindu literature there is any reference to a class of people who benefit their maternal ancestors alone by the offering of their *pindas*?

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[Mr. M. Raja Raja Varma]

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Under the Hindu Law, Sir, heirship goes through the male line, because they perform the funeral rites. Under the marumakkathayam law it is through the female. I may also say that marumakkathayam is also makkathayam in this sense, that is, makkatayam through the female line.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Is there mention made of it in the whole range of Hindu literature?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I have not yet gone through the whole of Hindu literature.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether the nephew will be entitled to any inheritance under the Hindu Law?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): The member himself knows it.

This brings me to the second reason which I want to explain in favour of my amendment. No legislature is competent to impose a custom or personal law on any community except by the general consent of that community. Although some of my friends were pleased to question the existence of any other personal law for a non-Nayar than what is common to all the marumakkatayees including Nayars, at least when he has contracted a marriage with a Nayar female, I must respectfully dissent from the view that, because a non-Nayar has married a Nayar wife, he has brought himself to her social or religious status.

MR. C. SANKARA MENON (*Quilon*): May I know whether the passing of the Wills Regulation in the Travancore Legislative Council is not an alteration of the personal law of the marumakkathayees?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Sir, was not present when the Wills Regulation was passed.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Is he aware of the fact that the Widow Re-marriage Act has thoroughly changed the customs of the Hindus?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): It may be. That is because of the general consent.

MR. K. PARAMESVARAN PILLI (*Tiruvalla*): What is his authority to say that no legislature is competent to pass any law in respect of any community without its general consent?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I said that no legislature is competent to impose a custom altering the personal law.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): We are not dealing with custom.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I say, the question of inheritance affects the custom of the community to which I belong.

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The argument that, because such a marriage has been declared valid by Regulation I of 1088, the non-Nayar husband has surrendered his custom, social status and religion, cannot be assented to. Regulation I of 1088 never contemplated any such surrender nor have any such consequences followed during the last ten years even among the Nayars themselves. The decisions quoted by my friend Mr. P. K. Narayana Pillai prove that property has descended only within the same community following different systems of inheritance. The provision made in the Bill is an attempt to throw away the system of law by which we are governed from time immemorial, and import a foreign model. In other words, the Bill wants marumakkathayam to be cast away and makkathayam installed instead. It is not for me to expostulate here on the wisdom of taking such a big jump in the dark; but, I believe, I have a right to ask whether the legislature has a right to impose the change on a community reluctant to adopt it. I do grant that when a custom is against public policy or morality, it should be abolished or purified. But surely marumakkathayam does not come under that category. It may be retorted by the same argument that non-Nayars have no right to impose their objection on the Nayar community after having allured them so long by intermarriage. That is exactly what my friend Mr. P. K. Narayana Pillai said at the introduction of this Bill. True, I have only to say that I consider this alluring doctrine as much a myth, as he thinks of my '*seeking after*' argument. I contend that no marriage with a Nayar female ever raised any the least expectation of inheritance on either party and that was never a condition of the marriage contract even after the passing of Regulation I of 1088. It is a new claim advocated now.

Has any necessity arisen for introducing a new claim? I cannot see any. In the first place, the tarwad provides for the maintenance of its members—every man and woman and child in it. The husband or father never leaves his wife or children in the cold, but allows them to share in his comforts and affluence even to the detriment of the members of his tarwad. In fact, one of the stock complaints against the karanavan and male members in any marumakkathayam family dispute is that they give away all to their wife and children and starve or impoverish the tarwad. It is evident therefore that the wife and children are seldom unprovided for by the husband and father whether he be a Nayar or a non-Nayar. Instances are rare in which a non-Nayar has cast away his wife and children without any provision for their maintenance according to his means. On the other hand, many a Nayar family could trace their affluence to its connection with persons belonging to non-Nayar communities. Secondly, I am not aware whether a person can claim simultaneously two sets of inheritance—one through the mother's tarwad and another through the father. That is what the present Bill contemplates. If it is the intention to supplant marumakkathayam by makkathayam, then it is only natural that male members of a tarwad should have no right to a share in the marumakkathayam family property. They tell the weaker sex: "Let us have our share of

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[Mr. M. Udaya Varma Raja.]

the plums and then we will leave you to your husbands." I leave it to the House to judge whether this is a correct and chivalrous attitude to adopt.

I ask what is the serious evil that we want to combat by introducing a new system of inheritance. If it is to obviate the vagaries or mismanagement of a karanavan, is the new system not open to the same, if not more, abuse by the father? The father has absolute power of disposal over the property which a karanavan has not. A bad father is more dangerous than a bad karanavan. If the change is for securing individual liberty, I ask should it be at the expense of the common tarwad fund?

Hence neither custom nor rule nor necessity has been proved for introducing a new system of inheritance which offends against the personal law and immemorial usage of non-Nayars. I propose therefore that the Clause be amended as I have put it.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether it was not the custom in rich Nayar tarwads, formerly, to provide for the maintenance of the husbands of their women?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): May be.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Has that custom changed now?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): In those places where the husband was maintained, he is being maintained even now.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Is he aware that there are non-Nayars of the Kshatriya caste married in Nayar tarwads spending large amounts of money for the comforts of their wives and children?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Certainly. That is what I say. They never leave their wife and children in the cold.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Was there such a custom fifty years ago?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): There was.

MR. M. UDAYA VARMA RAJA (*Co-opted*): Sir, in seconding the amendment so ably moved by Mr. Raja Raja Varma, I wish to emphasise the point urged by me in my first speech on the Bill that it is illegal to force the community to change its personal law by a provision for the benefit of another community. The South Indian Hindu carries his personal law with him, even if he emigrates to another part of India where a different system of law prevails.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I know from Mr. Udaya Varmá Raja what is the exact significance of the word "illegal" that he has put in just now?

MR. M. UDAYA VARMA RAJA (*Co-opted*): It is not within the province of the legislature to do so. That was what I meant.

The special privilege enjoyed by European British subjects in Asiatic countries, of being tried by Magistrates of their own nationality, is a recognition of their personal law as prevailing in Great Britain. The unwillingness of the British Government to interfere with the personal law is clear from the provisions of the Racial Distinctions Act recently passed by the Legislative Assembly.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether if a Travancorean proceeded to any part of British India or England he would be tried only by a Travancore court and not by a British Indian court or English court?

MR. M. UDAYA VARMA RAJA (*Co-opted*): As far as I am aware, I cannot answer that question.

I need hardly inform this House that according to jurisprudence the necessity for every enactment should at first be proved. I am yet at a loss to see the necessity for introducing in the Bill a provision affecting non-Nayars' inheritance. As the existing Nayar Regulation legalises the marriage of non-Nayars with Nayar ladies, there can be no question of invalidity ever arising in future. We regard such marriages no less sacred than marriages performed before the nuptial fire. (Mr. P. K. Narayana Pillai: "*Hear, hear.*") I may also inform the House that the Nayar ladies whom members of our community marry are accorded a status in society which they do not enjoy before. Non-Nayar fathers as a class are not less affectionate or solicitous for providing for their Nayar children than their Nayar fathers. The late mover of the Bill, whose untimely death is deplored by all communities alike, argued that such a provision has found a place in the Cochin Regulation. No doubt, it is fair to compare, but it is unfair to copy. Again the Cochin Regulation was not passed by a Legislative Council after due discussion.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Does he mean that His Highness the Maha Raja of Cochin has not adverted to all the consequences of this Regulation passed by His Highness?

MR. M. UDAYA VARMA RAJA (*Co-opted*): I did not mean that.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Does he know that the Cochin Regulation was passed after a report was made by a committee appointed to take evidence upon the matter after examination of witnesses and so forth?

MR. M. UDAYA VARMA RAJA (*Co-opted*): I think it was.

When the Bill was being discussed by the Select Committee one member said that Tampans and Tirumalpads had sent a petition to the

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[Mr. K. Parameswaran Pillai.]

Council stating that they were fully in favour of this provision. As the non-Nayar members of the Committee had not the privilege of reading the petition, I do not know what they said and what houses were represented by the signatories. The chairman of the Committee had not even the goodness to give us an abstract of their petition as he did in the case of others.

PRESIDENT: You should not refer in the Council to what took place in the Select Committee.

MR. M. UDAYA VARMA RAJA (*Co-opted*): I simply referred to the statements of one gentleman in the Select Committee.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether there was not a meeting of Kshatriyas in the Lakshmipuram Palace in Changanachery last month?

MR. M. UDAYA VARMA RAJA (*Co-opted*): I heard there was.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Was any resolution passed by that conference to the effect that the Nayar wife and children of a non-Nayar should not get any inheritance?

MR. M. UDAYA VARMA RAJA (*Co-opted*): I do not think any resolution of that kind was passed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Was there a resolution passed to the effect that the Nayar wife and children should be given a right of inheritance?

MR. M. UDAYA VARMA RAJA (*Co-opted*): I do not know.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether he got any invitation for the meeting at the Lakshmipuram Palace?

MR. M. UDAYA VARMA RAJA (*Co-opted*): Yes, Sir, I had.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): May I know whether a representation has been sent to the Government by some 90 families representing nearly a thousand men in a population of one thousand and three hundred Kshatriyas in this land, accepting the principle of this Bill and fully endorsing the view that the right of inheritance should be given?

MR. M. UDAYA VARMA RAJA (*Co-opted*): I do not know of anything like that.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Are we to take it that Mr. Udaya Varma Raja has not taken care to ascertain the opinion of his own community but is only expressing his individual opinions in the matter?

MR. M. UDAYA VARMA RAJA (*Co-opted*): No, I speak of other sub-divisions than Tampans and Tirumalpads.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Was not a copy of the resolution sent to Mr. Udaya Varma Raja?

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MR. M. UDAYA VARMA RAJA (*Co-opted*): No, Sir.

I would submit, Sir, that Tampans and Tirumalpads form only one sub-division of non-Nayars who consist of many other sub-divisions, such as Brahmins, Rajas, Koil Tampurans, Muttatus, etc. They have all protested against this provision. Two days ago I received the letter of the Elaya Raja of Edapalli Swarupam who, as the representative of his family, requests me to place before this House their prayer that no provision injurious to Brahmins and other non-Nayars should be included in the Bill.

I carefully listened to the speeches of my learned friends in the Council. I did also take part in the discussion of the Bill by the Select Committee.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know whether the male members of his community are entitled to marry in that community?

MR. M. UDAYA VARMA RAJA (*Co-opted*): I do not know that.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Has there been any instance of such a marriage in the community?

MR. M. UDAYA VARMA RAJA (*Co-opted*): By marriage I do not know what he means here.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Marriage or *Sambandham*.

MR. M. UDAYA VARMA RAJA (*Co-opted*): I do not know.

The only reason that seems to me to have prompted the embodying of this provision in the Nayar Regulation Amendment Bill is a sentimental one, *viz.*, that my Nayar friends want to declare by law equality of caste with non-Nayars who enter into marital relations with Nayar ladies. I submit, Sir, that the time is not come for declaring Nayar children of non-Nayar fathers as their descendants.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I want to make a correction. As a Nayar myself, I must declare that the Nayars in this House do not propose to abolish caste distinctions by legislation.

MR. M. UDAYA VARMA RAJA (*Co-opted*): As long as caste distinctions continue, the present state of things cannot but continue. This is not a matter that can be decided by a majority of votes. The feelings of communities which do not directly come within the scope of the Bill have to be duly respected. I therefore strongly protest against the retention of Section 22 in its present form and pray that the House may accept the amendment.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I rise to express my emphatic protest against the amendment moved by Mr. Raja Raja Varma. I am rather breaking a vow of silence I have been hitherto maintaining, for my own reasons. But I had never seen an amendment like this coming before this Council and moved by any

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[Mr. L. R. Raja Raja Varma Koil Tampuran.]

other individual. It is my just duty to oppose it as vehemently as I can possibly do. Twenty-four hours, the duration of a day, have not passed since the very mover of this amendment championed the cause of those who wanted the husband of a Nayar lady dying childless to inherit half the estate of the deceased wife. Fortunately or unfortunately, that amendment was not moved and the Section was left as it is. Not ten minutes have passed before a Section, which relates both to Nayar and non-Nayar husbands was passed by this Council. Not ten minutes ago a Section as this, "on the death of a Nayar female leaving her surviving none of the heirs mentioned in Sections 18 and 19, but only her husband and her grandmother's thavazhee, one-half of the self-acquired and separate property left undisposed of by her at her death shall devolve on her husband and the other half on her grand-mother's thavazhee"—was passed by this Council. This is Section 20. This Clause shows that the husband, whether a non-Nayar or a Nayar, is entitled to the property of the deceased wife leaving no children or brothers or sisters. In the present amendment the mover does not want even a single *kochucasu* (*laughter*) of the husband's or the father's property to go to the wife and children. The iniquity of this amendment is so patent that I think this amendment will deserve its fate—I mean that none excepting the mover and the seconder will support it. The non-Nayar husband wants half the share of his wife's property, provided she has no children and no brothers or sisters. The very same husband, in the case of giving a right of inheritance to the Nayar wife and children, is nowhere. The very mover of this amendment wanted to lift the husband to a grade over that furnished by the Section which was passed yesterday. So I need only say that I am sure this amendment will meet the fate that it deserves at the hands of every man who has got any sense of justice.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): I beg to support the amendment with the following remarks. I will be doing a great injustice to the constituency I represent and to the community I belong to, if I sit silent on this very vital question which affects them both. I represent a constituency consisting essentially, I believe, according to the voters' list, of non-Nayars and belong to the community of Keraliya Kshatriyas, who are all privileged, under the existing custom, to marry Nayar ladies. Many of the members of this constituency do have Nayar wives, and the Keraliya Kshatriyas—several of whom are also married to Nayar ladies—are allied to Nayars, at least in the law of inheritance. If there is one community that freely mixes with them, takes the keenest interest in their welfare and advances the most sympathetic views on their social matters, it is the Kshatriyas. I, for one, am very much astonished to find that there is such a divergence of opinion created between the views held by the members of the two communities on this solitary question and I really grieve for the unhappy split now created, based, I am sure, on certain misunderstandings.

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First, let me review our own situation. The Keraliya Kshatriyas are, all of them, marumakkathayees; and by their law of inheritance, the nephew or the sister's son (or the family karanavan, for the family) inherits the whole of the self-acquired property left undisposed of by any deceased member. They do not inherit from their father and I think it is unreasonable and unjust to impose a *makkavazhi* inheritance on their children only. If they take from their fathers it is well they are asked to give to their children. But they do not, and under the existing custom, they cannot. There is the question, is it not the same case with the Nayars? Yes. They now legislate to remove this evil.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Is he aware that a memorial has been submitted by Kshatriyas to include them also in the Nayar Bill?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): I am coming to that.

If the learned mover of the Bill had introduced a Bill regulating marriage and inheritance affecting all the marumakkathayees, I would have given him my earnest support for the reform. Neither the Kshatriya community nor the Nayar community are, as they stand at present, self-contained communities. The laws of one necessarily affect the other. I appeal to the good sense of this House and the Nayar community in general, to take a sympathetic view in the matter of the suffering Kshatriyas.

Now this Section 22 as it stands is extremely prejudicial to the interests of the non-Nayar—not to such individuals as entered into matrimonial relations with Nayar ladies, but to their legal descendants. It is not the opinion of a non-Nayar male who has a Nayar wife that ought to be considered here, but of his legal heirs, who alone, under the existing law, have a right to his properties, and who can inherit only from such a man. Think of the case, Sir, when there is one section at least in the community, whose males have only Nayar wives. The freedom of disposal of self-acquired property in the case of a non-Nayar husband is not restrained at all; but the right of inheritance that was his in the case of a non-Nayar marumakan is hereby taken away without his consent. Imagine, Sir, he case of one deprived of his rights and property and rendered helpless to defend himself in the matter, by imposing upon him an extraneous legislative measure not sought for by his own parents or guardians nor even by his own community. Such interference of personal law, I think, is inequitable and unjust in the highest degree. Suppose a new Bill for any of these non-Nayar caste-Hindu communities is introduced in this Council, with clauses which infringe upon the rights of any other community. Is it justifiable? It is not the question of passing it in the Council by a clear majority, but, a question whether the principle itself is acceptable at all. What we legislate here must be justice—pure justice. I do understand, Sir, the very great difficulty for the Nayar community to draw a distinction between the wives of Nayar husbands and the wives of non-Nayar husbands. (*Hear, hear.*)

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[Mr. L. R. Raja Raja Varma Koil Tampuran.]

MR. A. HOOGEWERF (*Nominated*): Are we not legislating here to define the rights of—

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Louder please.

MR. A. HOOGEWERF (*Nominated*): Are we not legislating here to define the rights and improve the condition of the Nayar community itself before we think of anybody else?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): May I answer Sir?

PRESIDENT: You may answer if you are prepared to answer.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): What I want is that the Nayar community should not be taken alone and legislated for, because they are by marriage and several other ties related to the Brahmin and the Kshatriya communities. It will be unjust for those communities.

I wish they do not draw the distinction at all. All the Clauses 12 to 17 should be made applicable to Nayar husbands and non-Nayar husbands alike in future. But what can be done in the case of existing marriages? Can we press the measure of absolute equality between the Nayar husband and the non-Nayar husband? Certainly that would inflict a very unhappy calamity both on non-Nayar families and Nayar families which have mixed non-Nayar couples.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether he has no objection to the applicability of Section 12 in the case of future marriages of Nayar ladies with non-Nayars?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): All the Sections from 12 to 19 must apply to non-Nayars and Nayars alike so far as future marriages are concerned and not as regards the existing marriages. That is my view on the question. As regards the existing marriages there must be freedom of contract.

The non-Nayar husband who is unwilling to be caught in the clucthes of this Regulation shall be obliged either to will away his property (if permitted to do so) or to make a gift or to resort to the last recourse of an entire retreat from the marriage contract immediately, which inhuman act I wish no man of any self-respect would do. A will of unknown contents is naturally construed to be against her by the wife; a gift or even a declaration open for the husband alone to perform, will equally discomfort her. This estrangement between the parties is sure to grow up, and it goes without saying that, though both parties suffer, it is the wife's party that suffers most, in any case. In an enactment purposely intended to benefit the Nayar wife, if this should be the natural result, it is deplorable indeed!

Hence, what I suggest is, in the case of existing marriages, the non-Nayar husband should not be driven to seek such a course out of dire necessity.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : I thought the amendment was intended to apply to future marriages, because under the existing law it is only contemplated to provide for maintenance. That necessarily means maintenance after the passing of this Regulation, whether the marriage is contracted before or after.

PRESIDENT: He says that it should not apply to marriages already contracted.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : Not for maintenance even?

PRESIDENT: No.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*) : At the end of my speech I have to propose an amendment.

The parties to the present marriages ought to be allowed full freedom of contract so that there will be no room for Mr. Govinda Menon's objection also. Hence, may I suggest to the mover of this amendment to put it as a proviso to Section 22, instead of substituting it for the present Section—a proviso concerning existing marriages only and allowing the parties to contract as they like, notwithstanding anything contained in this Section? The right for maintenance may be given in respect of existing marriages also. Hereafter, for future marriages there shall be no distinction. If it seems desirable for the Nayar community to accept, all right; Clauses 13 to 19 may be applied to all non-Nayar husbands also. The whole thing may be amended like that.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The question regarding existing marriages is sought to be provided for at the end of the Bill. So, that question need be considered only then.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): As it is, I do not know whether the last Clause will be passed or not. So I must give my opinion now and then vote for it.

PRESIDENT: Do you formally propose the amendment?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Let me finish my speech and then I will propose the amendment.

PRESIDENT: I thought you had finished.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): I must give the opinion of my community and constituency before I finish. That would be better and more impressive as regards the Council also.

Hence may I suggest to the mover of this amendment to put it as a proviso instead of substituting it for the existing Clause—a proviso concerning existing marriages only, allowing the parties to contract as they like, notwithstanding anything contained in this Section?

MR. A. GOVINDA MENON (*Alangad cum Parur*): Even as regards future marriages?

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[Mr. C. P. Kochukunju Pillai.]

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): No; the proviso is only for existing marriages.

Even if the member is not willing to accept my suggestion, I believe I am bound to vote for him. I stand here in the capacity of the representative of the Edavagai and Pension-holders' constituency. I had invited the opinion of the members of the constituency in a formal circular and the reply I have received from most of the members, —with the exception of two or three I can say all,—are identical on the point. That they disapprove of this Section—

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): അങ്ങ് ക്ഷത്രിയന്മാരുടെ പ്രതിനിധിയായിട്ട് ഇതിൽ അവരുടെ അഭിപ്രായം അറിഞ്ഞിട്ടുണ്ടോ?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): അറിഞ്ഞിട്ടുണ്ട്. ആ അഭിപ്രായം തന്നെയാണ് ഇവിടെ പറയുന്നത്.

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): മെജാറിറ്റിയിൽ എല്ലാപേർക്കും അനുകൂലാഭിപ്രായമാണോ?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): നൂറിനു തൊണ്ണൂറെട്ടും വിചാരിതാഭിപ്രായമാണ്.

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): അതുകൊണ്ടു ഇപ്പോൾ പറയുന്നത് സ്വന്തം അഭിപ്രായമാണോ?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): ഇതു എന്റെ സ്വന്തം അഭിപ്രായംതന്നെയാണ്. അതിനെ ഞാൻ സപ്പോർട്ട് ചെയ്യുന്നതേയുള്ളൂ അക്സപ്റ്റ് ചെയ്യണമെന്നില്ല.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): How many Edavagais are represented by Mr. Raja Raja Varma?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): I think, three. If the member wants the names, I am prepared to give them out.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): May I know whether he was present at the meeting of the Kshatriyas of Travancore held in the Lakshmipuram Palace?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Yes.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): Was it their opinion that they must be included in the Bill?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Yes.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): May I know the number of Kshatriyas present at that meeting?

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MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): About one hundred and thirty were present, of which there were eighty Tirumulpads and Tampans, and the rest, mainly Rajas and Koil Tampurans.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*). Will he give me the approximate number of Kshatriyas that were represented there?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Out of about seven hundred Tampans and Tirumalpads about seventy to eighty were present.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): So seventy persons represented seven hundred?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Out of a total population of about seven hundred or eight hundred about seventy or eighty were present?

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): That is not what I want. Will he be pleased to state how many Tampans and Tirumalpads those seventy that were present represented?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): I have given the figures. The percentage can be calculated therefrom.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): How many families did they represent?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): I do not know.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): How many were invited?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Almost all.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): How many families were invited?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): About seventy or eighty.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): About seventy or eighty families were invited and seventy or eighty were present, and each member present did not represent a family.

PRESIDENT: You should not cross-examine him like that. (*Laughter.*)

MR. L. R. RAJA RAJA VARMA (*Edavagai*): Koil Tampurans and Rajas also form an equal number. Out of them only about thirty were present.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What was their attitude with respect to Clause 22?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): We did not put that question there at all.

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[Mr. L. R. Raja Raja Varma Koil Tampuran.]

PRESIDENT: Kindly hurry up, Mr. Raja Raja Varma.

MR. A. HOOGEWERF (*Nominated*): Does the number 700 include the number of females also? (*Laughter.*)

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Yes, both males and females.

MR. A. HOOGEWERF (*Nominated*): Children too?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Yes, the total population of Kshatriyas, I am made to understand, is one thousand and four hundred, out of which nearly a half, or just a little less than a half, consists of Koil Tampurans and Rajas.

I had invited the opinion of the members of the constituency in a formal circular and from the reply I have received from most of the members, with the exception of two or three, I can say that they are unanimous in disapproving of this Section. Many of the members add that they agree to the opinion of Mr. M. Raja Raja Varma and expressly say that they wish that I should vote for the same. That is the express wish of the constituency.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Of three families?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): No, it is not the Edavagai only; it includes pension-holders also. They consist of more than three. As a member of the Kshatriya community also, let me say a few words. Of the different sections of Kshatriyas, I should say the majority of the males amongst Tampans and Tirumulpads are for the retention of the Section as in the Select Committee Report unimpaired. The other sections consisting mainly of Koil Tampurans and Rajas who come under the head of pension-holders mentioned before are by a vast majority against the retention of the same. Of course, taking the population into consideration and the opinion of the females also I believe the opinion of those who are against it will largely outweigh the other; and hence I request the members to look into the question with an unprejudiced mind and express their candid opinion in the matter without any communal leaning.

PRESIDENT: You do not propose any amendment?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): I have no objection to move it formally if necessary.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it possible to propose an amendment to an amendment?

PRESIDENT: I have already ruled that it could be done. Are you proposing the amendment, Mr. Raja Raja Varma?

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): The following may be added as a proviso to Section 22:—

"In the case of marriages subsisting on the date of the passing of the Regulation, the Nayar wife and children shall have a right to maintenance only, unless the parties contract in writing registered to the contrary."

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is not an amendment to the amendment under discussion.

PRESIDENT: If it is a different amendment you must move it afterwards.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): I want a proviso to be added to Clause 22.

PRESIDENT: That can be done only later on.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I rise to oppose the amendment. I am not second to my friend Mr. L.R. Raja Raja Varma in the spirit of good-will and I also trust that good-will is actuated by deliberation. But all the same I feel bound to oppose the amendment. The learned mover of the amendment has conceded that the marriage which a non-Nayar contracts with a Nayar female is sufficiently dignified. He has admitted that non-Nayar husbands do endeavour to raise the status of their wives. I have come across several instances in which non-Nayar husbands of Nayar females live in the houses of their wives. The trend of this Bill, Sir, is to make marriages more permanent than they were and more dignified. It is quite natural therefore that we should desire to give to the children of these dignified marriages sufficient status in the estimation of the world, and so long as in other communities inheritance is one of the incidents to this dignity, we claim that inheritance also should go to the Nayar children of such marriages. The amendment is to the effect that maintenance may be given to the widow and children after the death of the non-Nayar husband. The non-Nayar husband is at present compelled by law to give maintenance, so that the only change that is proposed is that even after his death his family property may be held liable for the maintenance charges. In the view that I have taken of the effect of these marriages, I may tell my friend Mr. Raja Raja Varma that it is not likely that this kind of feeble compromise will be accepted. It is a kind of relief work. It has been observed, Sir, that relief works are like opiates—the more one takes the more one wants. So that there is no justification for discussing this question at any length in this House because the route followed is not straight but circumlocutory, and therefore ineffective. The crux of the whole question is whether inheritance should follow a marriage. I quite sympathise with the views expressed by Mr. L. R. Raja Raja Varma that marriage is marriage whether it is marriage between Nayars or between a Nayar female and a non-Nayar male. I find in the agenda several amendments which cover a much larger ground than the amendment proposed by Mr. Raja Raja Varma. This amendment is not of a commendable or conciliatory nature. It does not serve the purpose. It would raise unnecessary animosities. In the view I have taken, I have chosen to oppose the present amendment because there is ample opportunity given to this House of discussing the question and examining in detail the merits of the more serious proposals. Nobody is going to be satisfied with this amendment even if it is carried. For that reason I oppose the amendment.

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[Mr. P. K. Narayana Pillai.]

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Sir, as we are at a very important and rather controversial stage of the Bill, I think, though a Christian it is my duty is to state my views on the subject. Of course, I thought that the best course for a man like me was to speak as little as possible, until very important stages like this are come, and then give my Nayar friends reap the benefit of my vote. But I think we have come to a stage at which my opinion also may be of some value.

Sir, I can really sympathise with the position of non-Nayars who, out of necessity or under circumstances historical or otherwise, which were beyond their control had to contract marriages with Nayars, and as such our chief duty is to see that justice is done to non-Nayar communities also. I can also understand the sentiment of the Nayar members, that what they feel most is that the marriages whether it be with Nayars or non-Nayars, of their females should be similar to other marriages, should have similar dignity and status; and that is a thing that every right-minded man should support. Of course on account of the peculiar customs or otherwise, though others may not attach the same importance or sanctity to the marriages of non-Nayars with Nayars, I think the Nayars are very right in demanding to recognise that marriage of Nayar females with non-Nayars should be as sacred and important as any other. Since we are making the matrimonial ties of the Nayar female, whether with the Nayar male or the non-Nayar male, more sacred and binding, I think we are bound to respect the feelings of our Nayar friends. But my only difficulty is, what are we to do with respect to the marriages of non-Nayars which were contracted at a time when there were no such restricting laws or when marriages were not followed by such rights as we are now providing for in this Bill? That being the case, my opinion in this, as well as in some of the Sections we have to deal with hereafter, is that we should see that the feelings of the non-Nayars are equally respected by not giving the Bill a retrospective effect with regard to existing marriages. Of course existing marriages came into being when there was no such Regulation. I find that custom was also not so strict as this. So when we are going to make a little departure from the existing practice, it is nothing but fair that the existing marriages should be left as it is, without disturbing the rights which they had at the time of the contract. So, under these circumstances, though I am not in a position to support the amendment of the mover, still I think some provision, as has been suggested by my friend Mr. L. R. Raja Raja Varma, with regard to existing marriages, is necessary, so that the feelings of the non-Nayar husbands also should be duly considered by this Council.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I am very sorry I have to oppose the amendment. The question that is now proposed by means of this amendment of Mr. M. Raja Raja Varma is whether the Nayar wife and her children by a non-Nayar should ever go

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without any inheritance. At best he concedes—what now exists practically as the law—that the Nayar wife and children of a non-Nayar are entitled to maintenance, and the only step forward that he has been good enough to concede in favour of the Nayar community is that, even after the death of the particular non-Nayar, his property, if any, may be made liable for the maintenance of the minor children and of the wife till the latter's remarriage. That is the only extension of the existing practice that has been suggested as a step forward for the time being. The object of the amendment is to deprive the Nayar wife and her children of all manner of rights in the non-Nayar husband's property. That is a position to which I am sorry I cannot reconcile myself. There are a number of other questions to be discussed, and this particular amendment which aims only at one thing, of depriving a right of inheritance and not creating a right of inheritance in favour of such non-Nayar's wife and children, I fear I shall not be able to accept.

My friend Mr. Nidiry says that we have to respect the feelings of the non-Nayar section also. I am sorry I will have to differ from him. Feelings ought to be respected but only in subordination to rights and justice. The first thing that we have to respect is the operation of justice between party and party, or, as an Englishman would put it, the righteousness of the claims and liabilities on both sides. If it is a righteous claim, certainly we ought to respect it first. If it is only a question of feeling struggling against one's sense of justice, I shall not allow myself to be overpowered by my feelings or get converted to the view of my friend Mr. Nidiry. Whatever may be the source of the feeling or the matter with which the feelings are entertained, I am sorry I shall not be a party to that view. What, therefore, I would request my friend Mr. Nidiry to bear in mind is the justice of the claim that we are going to make out in favour of the wife and children of the existing marriages, and if Mr. Nidiry, as I am sure, is going to be convinced of the claim, he may take that into consideration first and then think whether feelings should subordinate his convictions in the matter or not.

As to the position of Mr. L. R. Raja Raja Varma I hope that, when the matter is argued out, he would probably veer round and support the claim. He is a fair-minded young gentleman and I have great hopes in him. (*Laughter.*) It was in his Palace, Sir, that the Kshatriya convention was held, where a number of leading Kshatriyas of Travancore, headed by a man of remarkable culture, who has been serving the State in the Training College—I mean Mr. Rama Varma Tampan—assembled and passed memorable resolutions in language and sentiment redolent of all that is noble in their community, to support the present measure, requesting Mr. L. R. Raja Raja Varma himself at the same time to move an amendment to this Bill so that the provisions of this Bill may be made applicable to the Kshatriya community also. When I was the other day at the Ennakkad Palace where a marriage ceremony was performed, from my talk with various members of the Kshatriya community, to which

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[Mr. P. K. Narayana Pillai.]

my friend Mr. L. R. Raja Raja Varma as well as my friends Mr. Udaya Varma Raja and Mr. M. Raja Raja Varma also belong, I understood clearly that many of them were in favour of extending the right of inheritance to the wife and children of a non-Nayar belonging to their own community and that even existing marriages should on no account be made an exception in that respect. In pursuance of that view some of them had also written to Mr. L. R. Raja Raja Varma. I understand as he himself showed me a letter written by the artist Mr. Raja Raja Varma of Mavelikara, the nephew of Mr. Udaya Varma Raja whom we are glad to have with us in this Council,—that even in the Tampuran community there are a number of persons in favour of this particular measure. Again I am submitting that this question will have to be considered from a wider standpoint. I have just now informed the House the sort of voice which exists in the Kshatriya community with respect to this question. I am further of opinion that this is not a question which is to be viewed from any communal stand-point at all. Sir, a few members, be they of the Kshatriya community or of the Brahmin community or of the specialised Kshatriya community—namely, the Tirumalpad community or the Tampan community—are found to contract marital relations with Nayar females. Whatever be the sort of subsequent wrappings made to the idea of marriage, and whatever be the view that people are prone to take of it, essentially it is a matter of agreement between party and party. Even in Hindu Law we have got the observations of Justice Mr. Hunt quoted in 20, T. L. R., citing Gurudas Banerjee on the subject of marriage that, after all, it is a case of contract. Mr. Justice Hunt on page 92 of 20 T. L. R. says:—

> "Gurudas Banerjee on Marriage, page 95, cites a passage from Manu which shows that the actual evidence of the bond of matrimony is to be found in the first gift and that the religious ceremony was to make the marriage propitious."

So, even in Hindu Law, an authority so eminent as Sir Gurudas is of opinion that it is a matter of gift and acceptance, in other words that it is a matter of agreement between party and party. Such being the case, I raise the question where is the necessity of clouding it with all manner of things, and losing sight of the central idea? After all there is an agreement at the root of the whole thing. Such being the case I would raise a further question. Sir, in the realm of contract, if it so happens that one party happens to be of a particular community, should the community *ipso facto* have a claim and voice in the matter of his doings? It is a very strange proposition! I would request you, Sir, to consider the question of any member of the Kshatriya community making a contract with respect to a forest coupe. No one else has got anything to do with that agreement. So in the present instance I am submitting that there is only a question of agreement where one man undertakes, whether the rest of the community agrees to it or not, to marry a Nayar female. Is it the concern of the rest of the community to haunt the man through his proceedings with respect to it? No. I would take a more extended case.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Are we to go into that large question on this point and wait for the results of the voting on this issue?

PRESIDENT: Mr. Narayana Pillai anticipates the discussion and hence takes it up at once.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN) *Edavagai*): Does Mr. Narayana Pillai know that there is a section in the Kshatriya community who take only Nayar wives?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I do know, Sir. I was the first to give expression to it when the discussion came up in this Council.

Just take the more pronounced case of a member of the Kshatriya community about to get himself converted into Christianity or into the Moslem faith. What business has the community to do with such a man? Absolutely nothing. Of course in the present instance he does not change his faith. That he should always be kept subordinate to his community is rather very harsh. Therefore, I am submitting only this aspect of the question, namely, that there is no communal question to be dealt with here. Because certain members of the community speak this way and that way, that ought not to make us forget what we are at. Here are the doings of certain persons. What ought to be the consequences should be the question that the Council will have to take into consideration and it should not get itself blinded by irrelevant considerations of feelings and sentimental twaddle. Keeping all this apart, we must give the whole question our considered attention. Because the Edavagai has instructed me, because the pensioners have informed me thus—that, I say, is not the angle from which such a fair-minded young man as Mr. L. R. Raja Raja Varma has to view the question; but the real merits of the question have to be taken into consideration at a subsequent stage.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know whether the whole question is not being discussed from the point of view of the Nayar community?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): From the point of view of universal justice and righteousness. (*Laughter.*) For the time being I shall not consider myself to be a Nayar. It is a misfortune that I happen to be a Nayar in the present instance. (*Laughter.*) I say, I shall only consider the question from the stand-point of universal justice. I wanted myself to proclaim that aspect of the question and I am thankful to Mr. T. K. Velu Pillai for bringing it out. Viewing it in that light I am very sorry I have to oppose the amendment of Mr. Raja Raja Varma.

MR. TRIVIKRAMAR VASUDEVAR (*Jennies*): സർ, മിസ്റ്റർ രാജരാജവർമ്മയുടെ ഭേദഗതിയോട് ഞാൻ യോജിക്കുന്നു. ഇതിന്റെ തത്വത്തെപ്പറ്റി പലതും പറഞ്ഞുകഴിഞ്ഞു. മരുമക്കത്തായവും വിജാതീയവിവാഹവും ഒരാളിന്റെ ശക്തികൊണ്ടോ, അല്ലെങ്കിൽ ഏപ്പാ

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[Mr. Trivikramar Vasudevar.]

ടുകൊണ്ടോ നടപ്പിൽ വന്നിട്ടുള്ളതാണെന്നാണ് എന്റെ അഭിപ്രായം. മരുമക്കത്തായം നശിക്കുമ്പോൾ വിജാതീയവിവാഹവും അതോടുകൂടി നശിക്കുന്നതാണ്. രണ്ടെണ്ണം യോജിച്ചിരിക്കുമ്പോൾ അതിൽ ഒന്നു നശിക്കുകയാണെങ്കിൽ മറ്റതു നിലനിൽക്കുന്നതല്ല.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): ഒരാൾ ഏർപ്പെട്ടതിയതാണെങ്കിൽ പിന്നെ ആ ആൾക്കുതന്നെ മാറ്റരുതോ?

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): ആ കാര്യം ഇന്നും വിപരീതാഭിപ്രായത്തിൽ കിടക്കുന്ന ഒന്നാണ്. ഒരാളുടെ എപ്പോടായിരിക്കാം. ആണെന്നു തീർച്ചപറയുന്നില്ല. ആരായിരിക്കും എന്നും എനിക്കു നിശ്ചയമില്ല. അക്കാര്യവും സംശയമാണ്.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): ആ സംശയം എന്താണെന്നു കേട്ടാൽ കൊള്ളാം.

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): പരശുരാമനാണെന്നാണ് വിചാരിച്ചിട്ടുള്ളത്. അതുപറയുമ്പോൾ അതിലും വാദപ്രതിവാദങ്ങളുണ്ടാകും. അതാണ് ഞാൻ ഖണ്ഡിച്ചുപറയാത്തത്. ഇപ്പോൾ പരസ്പരം യോജിച്ചിരിയ്ക്കുന്ന ഒന്ന് എപ്പോൾ വേണ്ടെന്നു പറയുന്നുവോ അപ്പോൾ മറ്റുള്ളവരും അതിനെ ആചരിക്കേണ്ടതായി വരും. വിജാതീയവിവാഹത്തിനുതന്നെ കാരണം മരുമക്കത്തായത്തിന്റെ സമ്പ്രദായമാണ്. അത് ആചരിക്കുന്നവരൊക്കെ അതു വേഗം മാറ്റിക്കിട്ടണമെന്ന് ഇപ്പോൾ എവിടെ നോക്കിയാലും മുറവിളിക്കൂട്ടുന്നതു കേൾക്കാം. ക്ഷത്രിയന്മാക്കാകട്ടെ സാമന്തന്മാക്കാകട്ടെ മറ്റുള്ള മരുമക്കത്തായക്കാക്കെല്ലാപേർക്കും തന്നെയാകട്ടെ ഇപ്പോൾ മക്കത്തായം കിട്ടണമെന്നാണ് ആഗ്രഹമുള്ളത്. അതാണ് സ്വാഭാവികമായിട്ടും പ്രകൃതിത്തന്നെയായിട്ടുമുള്ള നിയമവും. ദായക്രമവും അതാണ്. ലോകത്തിൽ എല്ലായിടത്തും അതാണ് നടപ്പുള്ളത്. കേരളത്തിൽ മാത്രമേ ഇങ്ങനെ ഒരു മരുമക്കത്തായമുള്ളുവെന്ന എല്ലാവരും യുക്തിയുക്തമായി വാദിക്കുന്നത് ഞാൻ കേട്ടിട്ടുണ്ട്. അതുപോലെ വിജാതീയവിവാഹവും കേരളത്തിൽ അല്ലാതെ വേറെ ഒരു ദിക്കിലും ഉണ്ടെന്ന് എനിക്ക് തോന്നുന്നില്ല. ഇവിടെ ചട്ടപ്രകാരം പല വ്യത്യസ്തങ്ങളും ഉണ്ടാക്കാമായിരിക്കാം.

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ഒരു വിജാതീയവിവാഹം ചെയ്യുന്നതിൽ ഒരു ബ്രാഹ്മണന് ആക്ഷേപമില്ല. ഇങ്ങനെയുള്ള ഒരു വിവാഹം ചെയ്യുന്നതിൽ നായന്മാക്കും ആക്ഷേപമില്ല. ഇതു വളരെക്കാലമായി നടന്നുവരുന്നതാണ്. വിശേഷിച്ചും അതിനു നിർബന്ധവുമുണ്ട്. നമ്പൂതിരിമാർ അവിഭക്തകുടുംബക്കാരാണ്. അതിനെ നിലനിർത്തുവാനായി തറവാട്ടിലെ മൂത്തയാൾ സജാതീയവിവാഹവും ഇളമുറക്കാർ നായർസ്ത്രീകളുമായുള്ള വിജാതീയവിവാഹവും ചെയ്യുന്നുണ്ട്. ചില നായർകുടുംബങ്ങളിൽ നായന്മാക്കു വിവാഹം ചെയ്യാൻ പാടില്ലെന്നും ബ്രാഹ്മണക്കു മാത്രമെ പാടുള്ളുവെന്നും നിർബന്ധമുണ്ട്.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): ആ ഏറ്റപ്പാട് ഇപ്പോൾ നടപ്പിലുണ്ടോ?

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): അങ്ങനെ നിർബ്ബന്ധമുണ്ടായിരുന്നുവെന്നാണ് പറയുന്നതു്. അതു് ഇപ്പോൾ ചിലർ ഭേദപ്പെടുത്തിത്തുടങ്ങീട്ടുണ്ടെന്നുമറിയാം.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): ഇപ്പോൾ സജാതിയിൽതന്നെ വിവാഹം ചെയ്യുവരുന്നതായി അറിഞ്ഞിട്ടുണ്ടോ?

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): ധാരാളമുണ്ട്. അങ്ങനെവേണമെന്നാണ് ഞങ്ങളുടേയും ആശ.

ഞങ്ങളുടെ വക ഒരു കാൺഫറൻസ് (യോഗക്ഷേമസഭ) നടത്തുന്നുണ്ട്. അതിൽ ഇപ്പോൾ ഈ കൊല്ലത്തിൽ വിജാതീയവിവാഹം പാടില്ലെന്നും, സജാതീയവിവാഹം തന്നെ വേണമെന്നും, അഭിപ്രായം പാസാക്കീട്ടുണ്ട്. അതു് ഞങ്ങൾ ഒരു പതിനഞ്ചുകൊല്ലക്കാലമായി പറയുന്ന ഒരുസംഗതിയുമാണ്. അതിൽ അനേകം റസല്യൂഷൺസ് പാസാക്കീട്ടും, അതിന്റെ അനുകൂലങ്ങളാലും മുൻനടപ്പു് ഇപ്പോൾ ബലപ്പെട്ടുപോയതുകൊണ്ടും ഇതേവരെ ശരിയായിനടപ്പിൽ വന്നിട്ടില്ല. അതുകൊണ്ടാണ് ഞാൻ കഴിഞ്ഞ ശ്രീമൂലം പ്രജാസഭയിൽ ഇതിനു് ഒരുനിയമം വേണമെന്നു പറയാനിടയായതു്.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): ഈയിടെ തൃശ്ശിവപേരൂരിൽ വച്ചു് യോഗക്ഷേമസഭയുണ്ടായിരുന്നോ?

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[Mr. Trivikramar Vasudevar.]

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*) : ഉണ്ടായിരുന്നു.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : അങ്ങനെയാണോ അതിൽ പ്രസിഡൻറായിരുന്നത്?

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): അതെ.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : നായർഭാഗ്യമും കൂട്ടികൊടുക്കും ഈ നിയമം പാടില്ലെന്ന് അവിടെ ആലോചിച്ചിട്ടുണ്ടോ?

MR. TRIVIKRAMAR VASUDEVER (*Jenmies*) : അങ്ങനെയൊന്നും ആലോചിച്ചിട്ടേയില്ല.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): ഇങ്ങനെ ഒരു നിയമം വരാൻ പോകുന്നുവെന്ന് എല്ലാപേർക്കും അറിയാമോ?

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): അത് എല്ലാപേർക്കും അറിയാമോ എന്നറിഞ്ഞുകൂടാ. എനിക്കറിയാം.

PRESIDENT: You are not speaking on the amendment.

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*) : മറ്റുള്ളവരുടെ വാദപ്രതിവാദങ്ങളിൽ എനിക്കു പങ്കുകൊള്ളുവാൻ സാധിക്കയില്ല. എനിക്കു പറയാനുള്ളത് പറഞ്ഞു കഴിഞ്ഞിട്ട് ഞാൻ ആ ഭേദഗതിയോട് യോജിക്കുന്നു.

ഇപ്പോൾ ഈ വക നിർബന്ധങ്ങൾ എന്റെ സ്നേഹിതന്മാരായ നായന്മാരോടുതന്നെ—ഈ ബില്ല് കൊണ്ടുവന്ന ആളിനോടുതന്നെ—ഞാൻ ആവശ്യപ്പെട്ടിട്ടുണ്ട്. നിങ്ങൾ ഇനി മേൽ നായരേതരന്മാരുടെ വിവാഹമേ പാടില്ലെന്നു നിർബന്ധിക്കുകയാണെങ്കിൽ അതിൽ ഒന്നാമതായി അനുകൂലിക്കുന്നതു് ഞാനായിരിക്കും എന്നു പറഞ്ഞിട്ടുണ്ട്. അതു് നായർ സമുദായത്തിനെന്നല്ല ഞങ്ങളുടെ സമുദായത്തിനും ഒരു രക്ഷയാണ്. വിശേഷിച്ചും ഞങ്ങളുടെ സമുദായത്തിന് അതു് വലുതായ ഒരു രക്ഷയാ

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ണ്. ഞങ്ങളുടെ സമുദായത്തിന് ശാശ്വതമായിട്ടുള്ള സജാതീയവിവാഹം ന്യായവും അത്യാവശ്യവുമായിട്ടുള്ളതാണ്. അതില്ലാത്തതുകൊണ്ട് ഞങ്ങളുടെ ഇടയിൽ വളരെ സങ്കടം അനുഭവിക്കേണ്ടിവരുന്നു.

MR. G. PARAMESVARAN PILLAI *(Neyyattinkara)*: വിവാഹത്തെ സംബന്ധിച്ച് ഒരു വകുപ്പ് കൌൺസിലിൽ പാസ്സാക്കുമ്പോൾ ഇപ്രകാരം ഒരു ഭേദഗതി കൊണ്ടുവരാതിരിക്കുവാൻ വല്ല കാരണവുമുണ്ടോ?

MR. TRIVIKRAMAR VASUDEVAR *(Jenmies)*: അതിൽ ന്യായം കിട്ടുമെന്നു വിചാരിച്ചിരുന്നു. വാദിച്ചതുകൊണ്ടു പ്രയോജനമില്ലെന്നു ചില അവസരങ്ങളിൽ എനിക്കു തോന്നീട്ടുണ്ടായിരുന്നു.

വിജാതീയവിവാഹം പാടില്ലെന്നും അതിൽ അനേകം വകുപ്പുകളിൽ വിജാതീയവിവാഹം കാലക്രമേണ ഉണ്ടാകരുത് എന്നും കാണുന്നതിൽ എനിക്കു വളരെ സന്തോഷമുണ്ട്. നായരേതരനായ ഒരു പുരുഷൻ ഒരു നായർസ്ത്രീയെ വിവാഹം ചെയ്താൽ അയാളുടെ സ്വത്തു മുഴുവനുമൊ അല്ലെങ്കിൽ ഒന്നുപകുതിയൊ നായർസ്ത്രീക്കും മക്കൾക്കും ചേരണമെന്ന് ഈ ബില്ലിന്റെ ൨൨-ാമതു വകുപ്പിൽ പറഞ്ഞിരിക്കുന്നതിൽ ഞാൻ മുഴുവനും യോജിക്കുന്നില്ല. പക്ഷെ ഇതു പെട്ടെന്ന് എന്റെ സ്നേഹിതൻ മിസ്റ്റർ ററി. കെ. വേലുപ്പിള്ള പറഞ്ഞതുപോലെ മരുമക്കത്തായത്തിൽനിന്നും മക്കത്തായത്തിലേക്കു ചാടാൻഭാവിക്കുന്നതുപോലെയാതൊരു വിചാരവും കൂടാതെ വളരെക്കാലമായുള്ള കീഴ്നടപ്പനുസരിച്ചു പരസ്പരവിവാഹം നടത്തിപ്പോരുന്ന ഈ ഘട്ടത്തിൽ ഒരു നിയമംകൊണ്ടു് അവകാശക്രമങ്ങളെ ചവിട്ടി അടിച്ചു മാറുന്ന കായ്യം അനീതിയായതുകൊണ്ടു് എനിക്കു അതിൽ യോജിക്കാൻ തരമില്ലാത്തതാണ്. മിസ്റ്റർ. എൽ. ആർ. രാജരാജവർമ്മ കൊണ്ടു വന്നിട്ടുള്ള അമൻഡുമെന്റിൽ ഏതാനും വകുപ്പുകളിൽ ചില ഭാഗങ്ങളെ എതിർക്കയും, ബാക്കിയുള്ള ഭാഗങ്ങളേ അനുകൂലിക്കയും ചെയ്യുന്നു. നായരേതരനായ ഒരു പുരുഷന്റെ അവകാശി ഈ നിയമം പാസായിക്കഴിഞ്ഞാൽ, അതായതു് നായർ സ്ത്രീയുമായി ബന്ധമുള്ള നായരേതരനായ ഒരു പുരുഷന്റെ അവകാശി "വേറെ ഞങ്ങളുടെ സമുദായത്തിന്റെ ചട്ടം ഏതുപ്രകാരമിരുന്നാലും" നായർ കുട്ടികളും നായർ ഭാര്യയുമായി തീരുമെന്നുള്ളതാണ്. ഈ നിയമം കൊണ്ടു സകല സമുദായത്തിനേറയും അഭി-

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[Mr. C. Sankara Menon.]

രങ്ങൾക്ക് മാറ്റം വരുന്ന എന്നുള്ളതു കൊണ്ടാണ് ഞാൻ ഭേദഗതി വകുപ്പിനെ എതിർക്കുന്നത്. ഇങ്ങനെയുള്ള ഒരുനിയമം പെട്ടെന്ന് ഉണ്ടാക്കാൻ പാടില്ലെന്ന് ഞാൻ വളരെ താഴ്മയോടു കൂടി എന്റെ സ്നേഹിതന്മാരെ അറിയിക്കുന്നു.

സാമൂഹ്യമായിട്ടുള്ള സംബന്ധങ്ങളും മതസംബന്ധമായിട്ടുള്ള ആചാരങ്ങളും എന്റെ സ്നേഹിതൻ മിസ്റ്റർ പരമേശ്വരൻ പറഞ്ഞതു പോലെ ഇതിൽ അടങ്ങിട്ടുണ്ട്. ഇങ്ങനെയുള്ള ഒരു നിയമം പാസ്സാക്കുന്ന അവസരത്തിൽ പെട്ടന്ന് ഒരു മെജാറിറ്റിയെ ഉണ്ടാക്കുകയൊ, പരമ്പരയായിട്ടുള്ള ആചാരങ്ങളെ പെട്ടന്ന് മാറുകയൊ ചെയ്യുകയരുത്. കാലക്രമംകൊണ്ട് മിസ്റ്റർ രാജരാജവർമ്മാ പറഞ്ഞതു പോലെ ഈ നിയമം പാസായാലുണ്ടാകുന്ന നായരേതരന്മാരും നായർ സ്ത്രീകളുമായുള്ള വിവാഹത്തിൽ നായരേതരന്മാരുടെ മരണശേഷം വിനിയോഗിക്കാതിരിക്കുന്ന സ്വത്തിൽ നിന്നും ഈ കൂട്ടികൾക്കും ഭാഗ്യത്തിനും ചിലവിന് കൊടുക്കുക എന്നുള്ളതു്, (ഇപ്പോൾ ഇല്ലാത്തതാണ്), മതിയാകുന്നതാണ്. അങ്ങനെ പെട്ടന്ന് ഒരു അകൃത്യം ഉണ്ടാകുന്നുവെന്നുകാണുമ്പോൾ മേലാൽ വേറൊരു ഭേദഗതി കൊണ്ടുവരാവുന്നതുമാണല്ലോ. അങ്ങനെ പടിപ്പടിയായി കയറ്റിക്കൊണ്ടു പോയാൽ നിങ്ങൾക്കും ഞങ്ങൾക്കും ശാശ്വതമായ ഒരുനില ഉണ്ടാകുന്നതാണ്. അതിനാൽ അതിലേയ്ക്കു മാത്രമായി ഞാൻ അദ്ദേഹത്തിന്റെ അമൻഡുമെൻറിനോട് യോജിക്കുന്നു.

MR. C. SANKARA MENON (*Quilon*): I also oppose the amendment of Mr. Raja Raja Varma. The main ground that he urged was that the wife follows the laws of the husband and that inheritance must only arise by performance of the funeral ceremonies. By performance of the funeral ceremonies, at any rate, I am not aware that a marumakkathayee succeeds and gets any inheritance. I put the question to Mr. Raja Raja Varma as to whether he was aware of any such custom, whether it was the performance of the funeral ceremony that gives a right of inheritance. All that I can say is that it is new to me. So far as marumakkathayees are concerned, even when a person dies intestate leaving no heirs no one can perform his funeral ceremonies and claim his estate. The only person that immediately claims his estate is the Sirkar. Even when the last member wants to perpetuate his lineage by adopting a person to his family, he has to pay a very heavy fine to the Government for so doing. Therefore, so far as marumakkathayees are concerned, between the right of performing the funeral ceremony and the right of inheritance there is absolutely no

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connection whatsoever. Now it has been urged that according to their custom non-Nayars are permitted to marry Nayar females and that this custom certainly has the sanction of ages. Non-Nayars who are permitted to marry Nayar females are either Nambudiri Brahmins or Tamil Brahmins and also Kshatriyas and others. So far as the Brahmins are concerned, no doubt they have a personal law of their own. But so far as Kshatriyas are concerned, I do not find, in the least, any difference between the personal law of the Kshatriyas who marry in the Nayar tarwads and that of the Nayars themselves, excepting the slight modification introduced by Regulation I of 1088.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): Will there not be a difference after the passing of this Regulation? Am I to suppose that he means to say that it is the same only before the passing of this Bill or that even after the passing of this Bill there will not be any difference between the law followed by the Kshatriyas and that followed by the Nayars?

MR. C. SANKARA MENON (*Quilon*): There is a slight difference even now under Regulation I of 1088. Now it is conceded that marriages between a non-Nayar and a Nayar have been legalised by Regulation I of 1088. Therefore, all that we now ask for, by Section 22, is that the incidents of a valid marriage should follow. One of the main incidents of a valid marriage is the right of succession and therefore all that we now ask for is to attach those incidents to the validity of the marriage between a non-Nayar and a Nayar. It was stated that it would be a little inroad into the personal law of the non-Nayars and that such an inroad ought not to be permitted by the legislature, and that there was no precedent for such inroad. With regard to this, if there is any inroad at all, I submit, it is inevitable on account of the fact that these non-Nayars have to marry in the Nayar family. It is inevitable on account of that circumstance. If they do not want to marry, then there need be no inroad into their personal law. Now, the inroad into the personal law is after all very little. What is now claimed is not a right to the family property of the non-Nayar, but only the right to the self-acquisition of the non-Nayar, so far as the marumakkathayam law or the Hindu Law of the Mitakshara Brahmins is concerned. Even under the Mitakshara Law, self-acquisition was absolutely unknown in the past, and the right of disposing of this self-acquired property and the right of the creditor to proceed against such property was recognised only in the well-known Sivaganga case. It is perhaps about forty or fifty years ago that the right of self-acquisition itself was recognised. Subsequent to that, when we passed the Wills Regulation, testamentary right was given to the acquirers. But that was only to the extent of one-half of the property. This was applicable both to Hindus and marumakkathayees.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is Mr. Sankara Menon aware that the Hindu Wills Regulation conferred a right on Hindus and did not take away any right?

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[Mr. C. Sankara Menon.]

MR. C. SANKARA MENON (*Quilon*): Yes.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is some difference between conferring a right and taking away a right that has already been conferred. That is to say, there was no right of disposing before, and the law conferred the right of disposing of one-half.

PRESIDENT: Inroad so far as the heirs are concerned.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is no inroad as regards the heirs also.

PRESIDENT: Otherwise, they would inherit the whole property.

MR. C. SANKARA MENON (*Quilon*): The next inroad into the marumakkathayam law was when the right of the thavazhee to succeed to property was recognised by our High Court ruling. Therefore, gradually, the inroad into the personal law was being continued and we now ask only for a small change in the system. We do not want an absolute change of the system, and what we ask for is inevitable on account of the custom of these non-Nayars who want to marry Nayar females. There are also various other communities among whom a similar custom prevails. It was said that there was no such instance. Among the Mahomedans in Travancore there are those who follow makkathayam law and others who follow marumakkathayam law. If a Mahomedan following makkathayam law marries a woman who follows marumakkathayam law, the offspring succeeds to the father's estate, and under the marumakkathayam law they also get a share of the tarwad property. Similarly, among Ezhavas there are some who follow makkathayam, others who follow marumakkathayam, and still others who follow a mixed system. All these sections intermarry and they also follow the same principle as Mahomedans.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): May I know whether they do not belong to the same community—the Ezhavas and the Mahomedans he spoke off?

MR. C. SANKARA MENON (*Quilon*): In the case of Nayars also, it is a case of intermarriage.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Is it the opinion of Mr. Sankara Menon that Kshatriyas and Nayars are of the same community?

MR. C. SANKARA MENON (*Quilon*): I am not prepared to discuss that matter now. There is the custom that Kshatriyas are allowed to marry Nayar females. I only gave an instance where this custom is prevalent in other communities also. For the purpose of illustration I referred to two communities. There are various others

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also. Therefore, this is not a novel thing that we are now asking for. On these grounds I oppose the amendment of Mr. Raja Raja Varma.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I move for a closure.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I support the motion.

The motion for closure was then put to the vote of the House and carried.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Sir, the first objection to my amendment was raised by Mr. Govinda Menon, namely, that I was not consistent in having voted in regard to a previous Section and in proposing this amendment now. May I tell Mr. Govinda Menon that in that Clause I voted for the husband for the reason that whatever the wife has acquired must have been from the husband only? It is only natural that he must get it when his wife dies without any heirs. That is a small point and I do not want to dilate upon it.

Mr. Velu Pillai in his speech said that inheritance was claimed for the purpose of diginity and nothing else.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I must correct him. I did not say that inheritance was claimed solely for the purpose of dignity. What I said was, now that marriage is recognised to be dignified, inheritance must follow as a matter of course.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I thank him for the correction. I think that, whether marriage is dignified or undignified, the consequences follow in law. That inheritance is one of those items which make marriage dignified is very questionable. If so, all the marriages that now subsist between Nayars and non-Nayars and among Nayars themselves must be declared undignified; at least they have not got one essential of dignity.

Another argument was that I was coming in a circumlocutory manner and not facing the problem direct, and that I was advancing by a side-wind, as it were, to give some claim to the wife and children. I did it purposely. We have to prepare the community to come to that stage. The community must advance stage by stage and should not claim everything at one step. They must advance gradually, step by step. To begin with, I propose that, after the death of the husband, the property left undisposed shall be charged for the maintenance of the wife and children. Therefore I say I was not circumlocutory, I did it purposely. I wanted to go step by step and not all at once. Marriage is marriage under whatever conditions it might have been contracted, whether it is between Nayars and non-Nayars or among Nayars themselves.

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[Mr. M. Raja Raja Varma.]

MR. A. HOOGEWERF (*Nominated*): May I know whether the marriage of a Brahmin with a Nayar woman is not looked upon as a mèsalliance by the Brahmin community?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): It may be a mêsalliance in the sense that it is not a religious duty but only a social contract. That was exactly what Mr. Vasudevar was telling us when he said that Brahmins must be made to marry within their own caste. But they have not been able to do so on account of long—established custom.

Mr. Nidiry also, although he sympathised with a portion of my proposition, said that he had to oppose it because of the question of dignity. The question of dignity was raised even by him. I think I have sufficiently answered the question of dignity so far as inheritance is concerned. That will practically reduce all subsisting marriages to a lower level. I think it is not the intention of this House to deprive the wife and children of subsisting marriages of the dignity they have at present. They must not be looked upon as secondary to marriages which may come later on, after the Regulation is passed.

Mr. P. K. Narayana Pil'ai laid a great deal of stress on the question of contract. He said it was a question of contractual relation. I base my proposition on the same point. There was no contract whatsoever in the subsisting marriages that there should be any sort of inheritance.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether there was any contract for maintenance being charged?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): That is a thing which I *now* concede. There was no contract even for that. Therefore, there is nothing improper in denying even that.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): It is a matter of natural justice.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): It may be natural justice if it is a question of maintenance during the man's life-time.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know if in the Kshatriya community itself it is not usual after the death of a wealthy man to divide the property between the widow and the children, on the one hand, and the marumakkathayam relations, on the other?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I have come across very few instances like that.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I point out the case of the revered Professor, the late Mr. A. R. Raja Raja Varma Koil Tampuran?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): That is a solitary instance.

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MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I wish to know whether he does not view it as natural justice—that due provision should be made for the widow and the children of a non-Nayar husband or whether it is a mere concession?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): The question of natural justice I will come to.

With reference to Mr. Narayana Pillai's question of contract, I say that there was no contract of any kind—

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnatur*): May I know whether there was any contract as to inheritance between the Nayar wife and the Nayar husband?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Certainly not; in none of the marriages was there any such contract.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Are there not implied terms in the contract?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): You may make all implications as you will. They must be admitted by all. They are not always acceptable.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether Mr. Raja Raja Varma is aware of the distinction between "penalty" and "liquidated damages"?

MR. M. RAJARAJA VARMA (*Devaswom Commissioner*): I am not a lawyer like Mr. Velu Pillai, and I cannot give the distinction between those terms now.

Mr. Narayana Pillai referred to the forest coupe contract and said that the community had no business to interfere with such contracts. If a man is prepared to give inheritance to his wife and children, by all means let him do it. I have not the slightest objection to that. But it is on question of general principle that I object to it.

MR. G. PARAMESVARAN PILLAI (*Neyyttinkara*): May I know the general principle that is referred to?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I do not concede that in any marriage which has already been celebrated there is any express or implied contract that there is inheritance involved. The question of natural justice comes in only when a man has got the duty to maintain his wife and children. That is exactly what natural justice means. It does not mean that he should give away a portion or the whole of his property or whatever they want. So far as his property is concerned, the first charge on it probably may be the maintenance of the wife and children. That is natural justice. What is now claimed is more than natural justice. It is a new claim altogether.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I ask Mr. Raja Raja Varma for the sake of information what his attitude will be in regard to the inheritance by the widow and children of the self-acquisition of the husband in case a non-Nayar has married from his own community?

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[Mr. M. Raja Raja Varma.]

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): When such a contingency arises, it will be time for me to give him the information.

As regards Mr. Sankara Menon's remarks relating to the Wills Regulation which he said was an inroad upon personal law, I differ from him because it only gave him a new right and did not take away any right which he already enjoyed. I do not think there are very many points that I have to mention in connection with the discussion in this particular matter. I only wish that the House will sympathise with me when I say that it is not exactly that I oppose the wife and children being given any portion of the property of the husband or the father. On the other hand, as I have already said in my first speech, the rule is more or less that the husband and the father do maintain the wife and children and give practically their all to them before death. He exhausts practically all his earnings by the time he goes to his death-bed, when, probably, only his sons attend on him, his nephews resenting what has already been given to the wife and children. As a matter of fact what I simply say is that even now the Nayar wife and children of a non-Nayar have a dignity given. She is respected as the wife. She has a status in society. There is nothing sentimental about it.

MR. A. HOOGEWERF (*Nominated*): Can the Nayar wife and children go into the Brahmin family?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Sometimes they do.

MR. A. HOOGEWERF (*Nominated*): I mean, *can* they live with the Brahmin family?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Sometimes they do; but they are not allowed to take part in religious functions.

The legal justification for my position is that it shall not be possible for a law to change the long-established customs and manners of a community. It is not simply a question of devolution of property. We are simply taking the social customs and usages of a particular community. Therefore it is that I maintain that there should be no inheritance but only maintenance.

MR. A. HOOGEWERF (*Nominated*): I beg to know whether there is no harshness or injustice about it.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): There is no harshness in the sense that the proposal in the Bill is an inroad upon the religious belief and personal law of the non-Nayars.

The amendment that the following be substituted for the existing Clause 22 was then put to the vote of the House and lost:—

"On the death of non-Nayar male leaving him surviving a Nayar widow or children or both, they shall have a claim for maintenance out of the self-acquired and separate property left undisposed of by him at his death, such maintenance being given to the widow only so long as she remains unmarried and to the children so long as they are minors."

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The Council adjourned for lunch at 2-15 P. M. and reassembled at 3-15 P. M.

The following amendments were not moved:

MR. C. SANKARA MENON (*Quilon*): Delete the Clause and substitute the following:—

"On the death of a non-Nayar male leaving him surviving a Nayar widow or children or lineal descendant of deceased children or all, they shall, if the deceased has left a widow or lineal descendant of such children in his own caste, be entitled to one-half of the self-acquired and separate property left undisposed of by him at his death, and, if there are no such widow, children or lineal descendant of such children, the Nayar widow or children or lineal descendant of deceased children to the whole of such property."

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): Substitute the following for the existing Clause:—

"On the death of a non-Nayar male leaving him surviving a Nayar widow or children or the lineal descendants of deceased children or all, they shall be entitled to the whole of the self-acquired or separate property left undisposed of by him at his death, and if there is a caste-wife or her lineal descendants, the Nayar widow and children shall be entitled to equal shares with the caste-wife and her children according to their number."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move the following amendment to the existing Clause 22:—

I move first that the existing Clause be deleted and the following substituted in its place. The amendment itself runs as follows:

"*On the death of a non-Nayar male leaving him surviving a Nayar widow or widows, Nayar children and lineal descendants of pre-deceased Nayar children, if any, they or such of them as are alive shall be entitled to the self-acquired and separate property left undisposed by the deceased as follows: that is to say—*

"(i) *If such non-Nayar leaves him surviving also any non-Nayar widow or widows, undivided non-Nayar children and lineal descendants of such predeceased children entitled to succeed to his estate under his personal law, the property of such non-Nayar shall be divided among all the widows—*"

Instead of "*all* the widows," I would put "his Nayar and non-Nayar widows," in the light of the discussion on the amendment of Mr. Hoogewerf. Barely to state male or female was found ambiguous in that amendment.

"*children, and lineal descendants of predeceased children equally each of the widows being treated as equal to a child and the lineal descendants of each of the predeceased children taking the share which such child would have taken had it been alive.*

"*The share so ascertained shall be given to his Nayar widow, children and lineal descendants of predeceased children, if any.*"

PRESIDENT: Does that not follow as a matter of course?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is not obligatory, under my amendment, that the children left by the Brahmin widow should also divide. Of course it naturally follows.

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[Rao Bahadur K. A. Krishna Aiyangar.]

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I would draw my friend's attention to the fact that the thavazhee has not got anything to do under the Hindu Law.

PRESIDENT: This Clause refers to the case of a non-Nayar who is a marumakkathayee.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Exactly.

"(ii) *If such non-Nayar has no such non-Nayar heirs but leaves him surviving his mother or members of her thavazhee entitled to succeed to his property under his personal law, the inheritance shall be divided equally among his Nayar heirs as mentioned above and his mother or her thavazhee as the case may be, the mother and, in her absence, her thavazhee taking a share equal to that of a child.*

"(iii) *In the absence of the non-Nayar heirs mentioned in Clauses (i) and (ii) the whole inheritance shall go to the Nayar heirs mentioned in this Section.*"

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): So, my friend moves the proposition in this form. I have got a technical objection to submit. The amendment is not in order. It is not an amendment at all. I am not at present talking on the merits of the amendment. I am merely saying that in the form in which it is placed before the Council it is not an amendment but the substitution of one Clause for another that was settled by the Select Committee. In such cases, the proper procedure would be to negative the Clause and discuss the merits of this Clause. It was only by an accident that my friends withdrew their amendments, and it was only by an accident that this amendment came up.

PRESIDENT: Mr. Raja Raja Varma's amendment was an exactly similar one.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It may be, but it dealt with matters not comprised in the Clause settled by the Select Committee.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): We have discussed very many similar amendments.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am only saying that, in the case of those amendments that have not been taken up strictly according to the Rules and Standing Orders, those difficulties need not be repeated. I am submitting a point for your ruling. I may read a portion from May's *Parliamentary Practice*.

"An amendment may not be proposed.....to leave out from the first word to the end of the Clause, in order to substitute other words, or to effect a re-drafting of the Clause—such amendments being in the nature of a new Clause. In such a case, the regular course is to negative the question, that the Clause stand part of the Bill, and to bring up a new Clause at the proper time."

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Otherwise there are half a dozen substitutes appearing on the agenda. If by accident one member's amendment comes first and the House passes that, others are practically deprived of the chances of moving their amendments. In fact, the substantial portion of the substituted Clause, which tries to modify the Clause as settled by the Select Committee, may be incorporated in the Clause settled by the Select Committee, and that will be an amendment. Then nobody has got any grievance. Begin with the Clause as settled by the Select Committee; ask all those who have sent in their amendments to move them. I should not be understood as suggesting that all these amendments should be ruled out of order. My submission is that we can take up the Clause as settled by the Select Committee empowering all our friends who wish to move amendments to move them in the proper place, and then they should be discussed on their merits in the proper place.

PRESIDENT: Which is the proper place?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is a proposal by one of my friends that it should be one-fourth; the Clause settled by the Select Committee provides for one-half. The member may be permitted to move his amendment for converting it into one-fourth.

PRESIDENT: Then your objection relates to the order in which the amendments should be taken up and discussed.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): How are the amendments to be dealt with if we start with the Clauses as settled by the Select Committee? It is with reference to that that I make this submission. As a matter of practice and convenience, a course has to be adopted which would not deprive anyone of the privilege of moving his amendment. Because the Secretary or the ministerial staff that was responsible for drawing up the agenda put an amendment higher up, it should not lead to the undesirable consequences of one amendment being kept out altogether; for, when once the first amendment is carried by the Council others may not have any opportunity of moving an amendment with reference to what has been already adopted by the Council though they may have the privilege of moving provisos, explanations, exceptions and all the rest of it. In view of that, it appears to me that this is not the correct procedure. I raise it as a matter of order.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, may I say something in defence? The passage quoted from May relates to the admissibility of an amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Let me correct him. It relates to the discussion in the Council itself. This is what it says: "In such a case the regular course is to negative the question that the Clause stand part of the Bill, and to bring up a new Clause at the proper time."

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[President.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Does it not relate to the admissibility of the amendment itself? His main objection is with respect to the order of the amendments and how they should be discussed. With due deference to him, I would submit that he is pointing out a course which is absolutely profitless. If we are to begin by tinkering the existing Clauses submitted by the Select Committee, after exhausting all the tinkerings, no other amendment which goes to the root of the Clauses presented by the Select Committee could be discussed. What is the use of tinkering if ultimately it is entirely to be thrown to the winds?

PRESIDENT: Is that not inevitable?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is. I would suggest, if I am allowed to make a suggestion, that the Clause as submitted by the Select Committee is liable to be substituted by any other Clause in which case we may do without its amendment. Why should we undertake all the pains of improving the Clauses submitted by the Select Committee in case they are to be thrown out? Therefore I am submitting that my Clause which seeks to delete the present Clause and substitute this is a provision which calls for prior consideration.

PRESIDENT: We are dealing with amendments. The amendment mainly relates to the amendment of an existing Clause.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is an amendment of a radical character and if it is carried other amendments will not survive. And then the practice that we have been hitherto observing has been entirely in keeping with my request that I may be permitted to move this amendment.

PRESIDENT: Yes. We have been discussing and disposing of amendments which are substitutions for the Clauses in the Bill as submitted by the Select Committee. That is true.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Some of them were very violent and radical; for example, the amendments relating to monogamy and divorce have far-reaching consequences, so much so that the House has been practically switched off.

PRESIDENT: The result of adopting the course that you suggest would be that you will be compelling members who have proposed amendments to the Section as it stands to object to your amendment, which is of a radical nature, as you put it, on the ground that they are proposing other amendments. It is likely that, if your amendment is accepted, those amendments cannot be considered.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If they have got a following, my amendment will be voted out.

PRESIDENT: That is the understanding.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Am I once for all concluded from suggesting further amendments? As for that matter, is Mr. Subba Aiyar concluded from suggesting "substitute one-fourth for one half?"

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): He is at liberty to oppose me as keenly as he possibly can.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not want my friend to misunderstand me. I have not the slightest objection to adopting my friend's proposition as a starting Clause. Let us however make it possible for others who have sent in amendments to delete or substitute certain portions, to move those amendments to the Clause put forward by my friend. If the House proposes to consider all the issues involved in that Clause as a whole, I am prepared to agree for instance to certain portions. I am not prepared to vote upon certain other portions. If I am called upon to vote absolutely for the Clause or against it, I cannot say one way or the other. Therefore I say the proposition ought to be discussed and voted upon and proceeded with in regular order so that the difficulty that I anticipate of some amendments being thrown out would not arise at all.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out that the President has already allowed amendments to amendments being moved, so that the difficulty would not arise at all?

PRESIDENT: But this is an entire change; you want to substitute a new Clause altogether. You cannot move any amendment now.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In the present instance I have been allowed to move the amendment by the President.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is only when an objection is raised that the question of order comes up.

PRESIDENT: I am afraid we must put up with that disadvantage and proceed with the discussion of this amendment. Other members who have notified amendments will have to bring in their amendments to the Clause that is now moved.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): This is the amendment that I am proposing. The amendment has been necessitated by two or three considerations. In the first place, in the existing clause, that is, Clause 22, we have got an indefinite provision which is not clear to me.

PRESIDENT: It must also be remembered that, until the Clause is put after all the amendments have been voted upon, the Clause does not form part of the Bill, and hence I do not think that the moving of an amendment even contrary in a sense to what has been accepted by the House is ruled out subsequent to the passing of the earlier amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): 'On the death of a non-Nayar male leaving him surviving a Nayar widow or widows and

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non-Nayar heirs who are entitled to succeed to his estate according to the *law by which he is governed*' It is that expression that is very indefinite. For example in the case of a non-Nayar governed by the Hindu Mitakshara law he may have heirs to inherit his property beginning from his children down to *Samanodakas*. Therefore, what exactly is meant by 'undivided heirs' is not clear. Secondly, I raise the question, where is the justification for making a rough and ready division of the inheritance into half and half? It may be that– to continue the instance of a Hindu co-parcener—he may have five or six children by his caste wife, and two or three by his Nayar wife. So long as the contention of the Nayar community is directed to the question that there must be equality among all the children, be they Nayars or non-Nayars, of any particular father, my own idea is that there must be an equitable division of the inheritance among all the children equally. No doubt there are difficulties in view of the peculiar nature of the *Mitakshara* law, which does not conform in all its aspects to the Hindu marumakkathayam law. In the case of a widow, under the Hindu *Mitakshara* system, co-existing with her children, the widow will not be entitled to any share but only to a right of maintenance. To meet that difficulty it is that I suggest, for the purpose of arriving at the share that may be due to a Nayar wife and to her children by a non-Nayar husband, leaving behind also a non-Nayar widow, the non-Nayar widow may be treated as equivalent to a child in dividing the inheritance. If on that basis the inheritance is divided, it is easy to arrive at the shares that will be due to a non-Nayar wife and her children and to a Nayar wife and her children. Taking that share, I submit that it will have to be allotted and given to the Nayar wife and children in the case of a Hindu co-parcener. There are also the instances of marumakkathayam non-Nayars marrying from the Nayar community. In their case also, their heirs, again, if the existing provision is to be adopted, would be practically an unlimited number of people. The mother, the people belonging to the mother's thavazhee, and in the absence of the mother's thavazhee, the grandmother's thavazhee,—in that way of ascendant series a number of persons may be called the heirs of a non-Nayar following the marumakkathayam system. To leave the present provision unexplained would be to accept knowingly a confounded situation. Therefore I provide in Clause (i) that primarily the mother is the main heir of a marumakkathayee. So long as she is alive we are prepared to concede a share in her favour. In her absence, her thavazhee may be shown that favour, but none else. For, the preponderant claim of one's wife and children must be recognised and they should not be subordinated to the rights of any other person, be he a makkathayee or a marumakkathayee. In the absence of the people enumerated by me in Clauses (i) and (ii), I submit that Clause (iii) must come into operation. That, I think, is a fair and equitable distribution of the estate of a non-Nayar, without rudely shaking the present system of his law of inheritance. In these circumstances, I would submit my amendment for the acceptance of the House.

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Now I anticipate a number of difficulties, arguments and all manner of obstructions with respect to this amendment. In the first place, we have been listening, when Mr. Raja Raja Varma's amendment was being discussed, to the argument based on what is known as unduly interefering with the personal law of the non-Nayar concerned. Some people are prepared to put it as a retrospective operation, or retro-active operation of a statute which is fundamentally opposed to all vested rights. These are the objections that I have heard; and I would place the matter, as I think it ought to be, for a clear perception by the House. The opposition that I have been listening to, and the opposition that I imagine would arise, I fear, arise out of a profound misconception of the proposition involved in the amendment. Those who say that the existing marriages must necessarily be excluded from the operation of this statute are labouring under a serious misconception. Why should they be excluded? As I submitted, when arguing on the amendment of Mr. Raja Raja Varma, this question has to be viewed, in spite of every other construction that may be put upon it, ultimately as a matter of agreement between two persons who want to live as man and wife. Mr. Raja Raja Varma raised the question—if that is only a question of agreement—why we should press for the right of inheritance in favour of the children. I say that is an implied term in the agreement except when inheritance by children is excluded by written agreement as in the case of morganatic marriages. When princely people marry humble people, some of them take good care to see that an agreement is entered into whereby the wife agrees that inheritance is not claimed by any issue to be begotten on her. It is there alone that I submit the exclusion is agreed to. If there is no such exclusion, as an implied term of all marriage contracts, the children must necessarily be entitled to succeed. Further, may I raise the question whether there is any fundamental disturbance created to the rights of other persons in this particular provision? The main question that a legislature has to keep before its eye is that no vested rights should be disturbed by the enactment of any measure. In the present instance I would submit we are not disturbing, to any degree whatsoever, the vested rights of any person. In the present instance, any non-Nayar who has contracted a marriage with a Nayar female is at absolute and perfect liberty to utilise his self-acquisitions in any way he wants. Therefore in order that there shall be no complaints in this respect we have even taken care to remove the fetters on the testamentary power of non-Nayars. In the case of a Nayar girl marrying a non-Nayar husband it is entirely left to him to dispose of his earnings in any way he wants either by gift or deed of settlement. By any other method he may frustrate the right of his Nayar wife and children. Even after his death, there is the provision in the Wills Regulation which will enable him to dispose of his property in any way he likes. Such being the case, I would submit that there is absolutely no disturbance to the vested rights of any person. Where is the disturbance, I ask? What does it matter whether he contracted the marriage before, this Regulation or subsequent to this Regulation? He is the master of his own earnings. It is after his death that the question

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arises as to who should inherit the property left by him. Then I submit it is not his property. For, I think everybody would concede that the corpse, be it even of a Brahmin, cannot hold property. Thus only the expectactions of inheritance entertained by certain other members of any particular community would be affected. There, I say, it is a question of conflicting rights. Here is a person who leaves wife and children and also certain persons who would be hovering on the fringes of inheritance—distant cousins, and people of that sort. When a question of succession arises, I appeal to the sentiments of this House to tell me whether we should not view with justifiable favour the rights of the wife and children being placed much above the rights of any kindred or cousin. Therefore I am submitting that nothing like violence is done. What is after all the right of a person who expects to succeed to the property of another person? It is nothing but what is known as *spes successionis*. The property which he seeks to inherit may cease to exist before the death of the owner, or, if it exists, he may cease to exist before the inheritance opens. So much so, the legislatures in various parts of the world think that the mere expectancy of a particular person to succeed to the estate of another person is not even to be called property. If we refer to the Transfer of Property Act, and the general idea of real property gatherable from the English treatises on real property, we see that *spes successionis* as such is no property. What is going to be is pure *spes successionis* regarding property which deserves to be divided among the wife and children in view of their preponderant claims to such property. I may also draw the attention of this House to the fact that according to the best principles of liberalism as has been recently pointed out by the Economics Professor of the Edinburgh University, as I recollect in a lecture, an account of which was published in the *Hindu*, the acquirer of any particular property or wealth is at liberty to enjoy it till he dies. After his death, however, liberal principles are clear upon the question that it is not the concern of any person except the State to regulate the inheritance. If you are going to leave it to the discretion of the State to regulate the inheritance of such property, I submit, there the State has to take into consideration the interests of the wife and children as more weighty than the interests of a person possessing but a bare expectation. Viewed in that light also, I am urging an argument which it is very difficult for anybody to refute. Thirdly let us look into the course of legislation elsewhere. The concern of modern States in the welfare of the wife and children is so intense that certain States have been at the pains to validate marriages and so to resuscitate inheritance. For example, in Scotland, and also in France, if without marriage a man and a woman co-habit and children are born, and after the birth of these children if the parents marry duly, the law says—I have got the *Empire Digest* in my hands and it will clearly bear me out—that all the children that have been born before the wedlock will be able to inherit the property of the deceased father. If legislatures and law-givers are prepared to go to that extent,

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that is to say, if when no marriage was contemplated by the parties and children unhappily came into existence, the whole situation can be altered by the father and the mother ultimately agreeing to go through a formal marriage, so that what has never been existing may at once be brought into existence and all the children would be legitimated and entitled to the property of the father who gave birth to them before marriage—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Will my friend please state whether they are cases governed by different personal laws or the same personal law?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In the case of an English woman married by a Scotchman, if the property happens to be in Scotland the law of legitimation would apply. But that is not the law in England. The law in France is exactly as I stated. Advanced States have taken into consideration the welfare of the wife and children to such an extent that they ride rough-shod over all manner of subordinate claims to inheritance. The peculiar situation of the English law is different. But, even in England, may I draw the attention of the House to the Married Women's Property Act of 1883. Till that year when that Act was passed married women were not entitled to hold property themselves. The husband was the only person entitled to hold the property of his wife until her death. The Married Women's Property Act was passed in 1882. It directed that, even with respect to existing marriages, acquisitions made by the wife from the date of the passing of that Act, would be entirely at her disposal and the husband was excluded from the control of such properties *in toto*. I am asking, whether any English husband put forward any complaints on that score and whether the complaints of our non-Nayar friends are to be listened to seriously. "Sir, I married this girl under the expectation that as long as the marriage subsisted I was entitled to hold her property. What is the meaning of the legislature interfering with what I am entitled to? This is my vested right which has been disturbed." That sort of argument no Englishman put forward. If any man had put forward such an argument that certainly would have been rejected summarily. I submit expectations of various kinds exist in the minds of persons. If we are going to turn our course of action paying attention to all these expectations, taking them as serious rights, and confounding expectations and rights, then the opponents of the measure we are now considering have got a good case. If, on the other hand, pure expectations being pure *spes successionis* – are not to weigh with us or with any person who knows anything about law and legislature, then I have got a strong case. We are only enacting a provision in regard to the rights of inheritance to the property left by a person at his death. Till then he is the master of his wealth. Nobody has got anything to do with it. It is left to him to do whatever he likes with it. Certainly some persons may have their mouth watering at the expectation of getting the property. Is there any cruelty in depriving them of such expectations in view of the nobler

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idea of his wife and children inheriting the property, especially the latter, who are not in any way responsible for their coming into the would but for the activities of the deceased and the surviving widow? *(Laughter.)* Is this not more just, I ask? I am appealing to the noble sentiments of all the gentlemen present here to consider the question in that light instead of being swayed by feelings, as Mr. Nidiry put it. I require them to consider the question from a point of pure justice and righteousness, to consider the question on the merits of the claim that the wife and children have got to put forward in this case.

Sir, this question of providing for the inheritance of the children of a non-Nayar by a Nayar wife has been in the field of marumakkatayam law for the last twenty years. It was in the 20 T. L. R. Case that the matter came to a head and the observations of Mr. Justice Hunt, an Englishman who cannot certainly be twitted with the charge of having any leanings to one side or the other, are as follows:—

"It is a notorious fact that there are a number of Brahmins in this country who enter into *Sambandhams* with Nayar women with the consent of the relatives of both parties accepting it as a lawful union and then, when convenient, deserting their Sudra wives and children, screening themselves behind their caste barriers in order to repudiate their responsibilities."

That was the pronouncement made nearly twenty years ago, and the community has taken clear note of the utterance of the learned Judge and has ever been trying to improve the situation. We have been trying on each occasion to introduce a system of inheritance from the non-Nayars. But in the reactionary alchemy of aristocratic influence and Brahminical blandishments, the attempts have hitherto been frustrated. The present attempt is to rectify a mistake that has already been committed. In the year 1088, when we provided for the validity of marriage in Regulation I of 1088, we had been practically tapping the source of a river and at once choking it up by not allowing it to flow. That is to say, the validity of the marriage has been allowed; all the same, people have strangely said that no inheritance shall be allowed either to the wife or children. That is why I say we were tapping the source of a river and at once choking it up so that it might not flow into the open country. That was the mistake committed in 1088. The attempt here is to rectify that mistake. Who can say, therefore, that he has been wheedled into a marriage with a Nayar female without knowing the situation? The agitation has been on foot. Everybody understood what was going on if, as a matter of fact, anything was going on. If it is going to be pointed out by non-Nayars that they never expected a law of this sort working to their prejudice, I say: "You knew the sort of agitation that was going on and you had no business to expect anything to the contrary." On the contrary, I say on behalf of the Nayar wife and children, that they expected one time or other that this mistake would be rectified. If expectations are to be justified why not allow them to take advantage of what was already done on their account or what is yet

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to be done? It is not right to say that the gentlemen who have married Nayar females have done so without any knowledge of what was transpiring all around them. Then let me point out what the previous provisions accepted and carried by this Council are. Sir, in the matter of divorce when Mr. Govinda Menon's proposition came up, I thought it would never be seriously taken into consideration. But the learned members of this Council said, in the interests of the Nayar community, that his amendment should be carried. So, the extreme difficulties of divorce courts have been introduced into my community. That matter did not stop there. When we came up to the question of monogamy, Mr. Hoogewerf, Mr. Govinda Menon and others stood for it. Mr. Hoogewerf brought in a small amendment containing *one word*, which made the community a monogamous community!

MR. A. HOOGEWERF (*Nominated*): Hear, hear.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Thus the position reached is this. Then, so far as the prime supporters of the Bill are concerned, they are going to provide practically for individual partition. All this put together comes to this: Here is a woman who has to look exclusively to her husband and is solely charged with the welfare of her children who may happen to be born to non-Nayars as is usually the case in North Travancore and Central Travancore. Absolutely nothing is provided in the shape of inheritance and the woman is left to the chances of the good graces of the husband and the children to the tender mercies of their heterogeneous father. That, I beg to submit, ought to appeal to the sympathy of all those persons who were bent upon enacting monogamy, divorce, etc., and that ought to appeal to their sense of righteousness. Why should they not under these circumstances provide for a right of inheritance in favour of the Nayar wife and children? That is another aspect of the question.

So I am submitting on the whole that the cry with respect to the operation of the statute as disturbing vested rights is baseless and then the question of feelings—clothed in morbid sentimentalism is one which a man with a sense of justice cannot afford to listen to. Here are the wife and children left without any succour where the woman probably might have accepted such a marriage in absolute poverty and helplessness. Had the conditions of the Nayar community been allowed to continue, probably there would have been the shadow of a chance that women and children may be dependent upon distant members of the tarwads; they will be protected by the tarwads in some cases. So far as the members of the community are concerned, the husbands are bound to protect their wives and children. But when poor women are left scattered here and there, practically turned out as waifs and strays, no legislature can contemplate such undesirable situation with anything like composure. I am moving this amendment in all fairness. Children are children in all cases. It is a case of justice. Here is the case of the helpless woman absolutely unable to maintain herself, and poor children. Poor creatures! in their case I ask whether there is no drop of tear in the learned members of the Legislative Council so that the wife

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[Mr. A. Hoogewerf.]

may be enabled to keep the wolf from the door without being turned on the streets. I say that I have conceded a good deal in favour of the non-Nayar husbands who may have their co-parcenery properties and corporate properties untouched.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is the Nayars' tarwad property to be touched?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What is the sort of property that these poor women may have?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vkil*): I mean the property of the Nayar male.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): We can imagine the sort of tarwad property that they would be possessing, seeing they are compelled to contract marriages with persons who come from Tinnevelly, Coimbatore and so on.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is that the answer to the question?

PRESIDENT: That is how he chooses to answer.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Leave it to me.

I am submitting that I have conceded a good deal in the matter of the inheritance of the widow and children from the non-Nayar. His non-Nayar widow and children have got a claim on their co-parcenery property which his Nayar wives are not in a position to claim. I only take into consideration the barest equity in regard to the inheritance of the Nayar children and widow; I only ask for a fair division. That is what I say. So far as fairness can go I think it is not possible to conceive of a fairer position. Under these circumstances, I am moving this proposition for the acceptance of the House.

MR. A. HOOGEWERF (*Nominated*): I have very great pleasure in seconding Mr. Narayana Pillai's amendment. I take my humble stand with my friend Mr. P. K. Narayana Pillai and plead only for justice and fair-play. In spite of all that may be said to the contrary, I feel confident that there must be rejoicing in most of the Nayar—and I would add, non-Nayar—homes in Travancore at the legislation that has been passed in this Council during the last few days. We have been singing the requiem of a free and easy divorce and polygamy. An attempt was made yesterday to allow polygamy in the case of non-Nayars; but the proposal met with such a storm of opposition that the mover gracefully bowed out of his rather false position. In effecting these changes this Council has done a great service to the communities concerned. Some of the members of the community may have some misgivings, but I feel confident that the future and even the present generation, particularly, the wife and children, will bless this House for effecting this salutary change. We are rising from the loose to the fast;

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from the contractual and sensual to the spiritual aspect of the marital tie. No amendment should be passed by the House which tries to undo what we have already done. It will not be a logical sequence of the changes already effected. "He who puts his hand to the plough and looketh back is not worthy of the Kingdom of Heaven." We are moving forward and we must do so with courage and confidence. If the non-Nayar chooses to marry in the Nayar family he must abide by the customs and laws governing that community. Justice Hunt has most practically struck the key-note of the whole situation. If a custom or law did not exist at the time of marriage, it surely does not follow that no change can be effected subsequently. If this is to be a principle, there can be no progress in any community. The argument brought forward by our friends may also be brought by a Nayar with regard to the introduction of the makkathayam law. We have to begin somewhere. After all, Sir, is there any harshness or injustice in asking the husband and the father to provide for his wife and children? Mr. Raja Raja Varma, to whom I put a pointed question, had to admit the justice of the principle. The distribution of the assets of a deceased person is the function really belonging to the State to be performed according to justice and equity. If custom or law is against it, it must be altered. I cannot understand all that has been said about the performance of *Sraddham*. Why should not a Nayar son perform the *Sraddham* of the non-Nayar father? Will the spirit of the deceased father not be benefited by his prayers and offerings? Does not the Hindu Sastra enjoin that the son should do it?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Does Mr. Hoogewerf know anything about the Hindu Sastras? (*Laughter.*)

MR. A. HOOGEWERF (*Nominated*): Just enough to deal with this question. (*Laughter.*)

Does it anywhere say that a son of a Brahmin by a Nayar wife should not do it? What about the son of a Raja? Has he a son in his own caste to perform the *Sraddham*? A money value should not be put on the performance of religious rites. To avoid all these complications, let the non-Nayar keep to his own caste. But if he wants to marry in a Nayar family, he must treat his Nayar wife as he would do his caste wife. If his laws do not permit him to marry, as stated before, let him do away with child marriage and introduce widow marriage and also raise the age of marriage. That will solve the whole difficulty. The marriage of a non-Nayar with a Nayar is looked upon certainly as a mésalliance. We have been legislating to give the wife a proper place in the home. This sort of alliance cannot but conduce to lower her status. A marriage of convenience should no longer be tolerated. I beg to repeat that, if the non-Nayar is not prepared to admit his Nayar wife and children into his family, and give them their legitimate dues, a barbed wire fencing should be put round the community to prevent members of other communities trespassing upon it.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): I would oppose the amendment. Sir, the argument just put

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[Mr. T. Lakshmana Pillai.]

forward by the learned mover of the amendment was based entirely on quotations from English law, the customs of Frenchmen and such people. I think that cannot be applied in the case of marumakkathayees. Those people cannot conceive of the marumakkathayam law or the relations between *marumakan* and his uncle or the karanavan. The quotations relating to the preference of children to other relations cannot hold good here. That is one of my objections.

Mr. Narayana Pillai ended by a strong appeal to all those present here, about the deplorable condition in which the Nayar ladies of non-Nayar husbands would be put to if the amendment was not carried. Though I cannot take the same view on the point, I submit that the non-Nayars also will be put to very great difficulty after the passing of this Bill. When we compare the conditions of both the communities and when we see that the Bill is enacted for the Nayars, the only question is, who should be prepared to take the risk and suffer a bit? One of the parties should suffer a bit. Who should that be? I think equity demands that the Nayar party must suffer a list. We are enacting this law for their good; therefore it is their turn to give way. Hence I oppose the amendment.

MR. T. LAKSHMANA PILLAI (*Nominated*): Sir, I would support the amendment and give my whole-hearted enflorsement to the rateable distribution of the property suggested, provided the expenses for the funeral and other religious rites incidental to the death of the non-Nayar husband be made a first charge on the deceased's property. Any other arrangement or any provision less liberal would not be in keeping with the position of the Nayar lady as a wife, and would, in fact, be tantamount to pulling her down from her real status. I view the matter from the point of absolute or universal justice and equity. May I say that any scantier provision would not be in keeping with the dignity of the non-Nayar himself as a husband? All women at birth must be taken to be equal in status and therefore the taking of a woman to wife from whatever caste makes no difference in her right which must rest on the foundation of absolute justice. It matters little that a Nayar wife or her children are not able to partake of meals with the non-Nayar's community or to participate in the religious functions performed in relation to the non-Nayar. These are subsidiary matters having little to do with the main position of the Nayar woman as wife, and probably they are due to dietetic and other similar considerations. The mere fact of her having been his conjugal companion for life would entitle her to the highest status, *viz.*, that of a wife.

The circumstance that the funeral and other religious rites of the deceased have to be performed need not go so far as to reduce the share of the Nayar wife and children from one-half to one-fourth of the property.

I may say that, if some form of religious observance could be, as I think it may be, devised for the children of the Nayar widow to be performed independently of those performed by the children of the caste

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wife, I do not see what valid objection could be taken to it by any authority, spiritual or temporal. After all, it is a mere question of offering prayers for the dead which each community may do in its own way. The necessity for the performance of religious rites should not be allowed to interfere, to any appreciable extent, with the not less sacred duty of providing adequately for the temporal wants of his Nayar widow and children. For these reasons, I am of opinion that the Nayar widow and children should be treated on a par with the caste widow and children in the matter of inheritance, after the expenses for the religious rites are duly provided for.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I regret very much I have to oppose the amendment brought forward by Mr. Narayana Pillai. In so doing I may at first clear the ground of any doubt or suspicion that may exist. It is not my object not to allow any right of inheritance to the Nayar widow or children. When we are trying to improve the social condition of any particular community and to provide legislation for the purpose, it is our duty not to ignore the social conditions and customs existing in other communities, especially when a legislation for one community affects the other. That aspect of the question should be taken into consideration before we decide one way or the other.

Mr. Narayana Pillai was trying to quote precedents and other matters with reference to English cases where they are all of the same religion, and law and where the personal laws are alike. We may keep them out of consideration because we have to recognise the circumstances existing in Travancore and have to provide accordingly. I may in the first place, take the Nayar community itself. If the present legislation is intended to affect the Nayar community alone we may safely say that the general sense of the community is for a particular measure and allow it, leaving the minorities who dissent from it to get away from the legislation if they so choose. But it is not *that* that we are confronted with. There are some communities who have been brought into or enabled to come into marital relations with the Nayar community. Just as it is our duty and interest to see that the Nayar wife and children are provided for, it is equally our solemn duty to see that the personal rights of the other communities are not seriously infringed. When once we try to enlarge the rights of particular persons there *will* no doubt be some infringement of others' rights. But it is our duty to see that the fabric of social custom is retained. We should not deprive persons belonging to other communities of the rights that legitimately belong to them. In the first place let us take the Nayar Regulation into consideration. We did not say when the Nayar Regulation was first passed that the Nayar wife and children of a particular individual should be entitled to whatever right the Nayar male himself had in the tarwad. We were prepared to concede that the wife and children would be entitled to a certain amount—only a certain share—of the self-acquisitions of the deceased husband or father. There again, the safeguard was that one-half should go to the undivided marumakkathayam heirs and the other half to the wife and children of the deceased. When

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we began to discuss the provision with reference to intestate succession. Mr. Velu Pillai said that the existing state of affairs was perfectly satisfactory and that the Nayar wife and children should be entitled only to one-half of the deceased's estate. His view was supported by thirteen of the honorable members of this House. I state that only to show that even among the Nayar community it is not the general sense that the children should get *the whole* of the father's property. In the case of the other communities it will be in the knowledge of the House that there are some who can marry only from the Nayars and whose women can be married only by Brahmins. If it is only a case of a Nayar male marrying a Nayar female and of the Nayar children of that union, then we can say that, if a person does not get anything from his uncle, he may get something from his father. In other words the law is reciprocal. It binds the husband and the wife equally, and both of them are governed by the same law. It is not so here. Take the case of a Kshatriya who is governed by the Marumakkathayam Law. You provide that his Nayar wife and children should take the whole of his property under a certain set of circumstances. Kshatriya women could be married only by Brahmins who are not bound to pay them anything—who are not even bound to give them maintenance. In many cases the women are maintained by their own families and not by their husbands. That being the case, if all the earnings of the non-Nayar husband go to his Nayar wife and children—

MR. C. SANKARA MENON (*Quilon*): Not all his earnings.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will come to that. You provide only for the mother and the mother's thavazhee. I will not leave out any portion of the arguments unanswered.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I ask whether this Section affects the whole of the non-Nayar community or only individuals having relations with Nayar females?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It relates only to individuals who enter into marital relations with Nayar women. So it is in the case of Nayar males. I do not know whether we can distinguish between individuals and communities. When marital relations are allowed only between communities and when individuals can be affected, I think the communities will also be affected. I do not think any serious argument can be advanced with respect to that. With respect to intestate succession among Nayars it is only those Nayars who marry in Malabar tarwads that will be affected by this law. What I say is that, in their case, if the whole of their earnings could be given away under certain circumstances, namely, in the absence of the mother or the mother's thavazhee, then the result would be that the other relations would not be allowed anything. The whole of the estate would go to the Nayar wife and children. That was not what was anticipated when the Nayar Regulation was passed. We did not say that, in the absence of the sisters and sisters' children alone, the wife and children

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would be entitled to one-half of the property. We put it generally "undivided marumakkathayam heirs." If so, what necessity is there to restrict its scope now insofar as non-Nayars are concerned? It is not clear. While I am entirely in agreement with my friend to allow a definite share of the inheritance of the deceased non-Nayar's estate to his Nayar wife and children, I am not prepared to enlarge it in the case of Makkathayees in the absence of undivided children alone or in the case of marumakkathayees in the absence of the mother or her thavazhee alone. There may be cousins, there may be divided sons. By the proposed amendment we are entirely ignoring for the present that, so far as the personal law is concerned, there are certain religious obligations and duties to be performed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether the duty of keeping the body and soul together is not more paramount?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes, I am not against allowing *any* share. I am for allowing a definite share. What I am saying is that you are concentrating all your attention on the status of the Nayar wife and children, ignoring altogether the personal law of others and not giving them any time to adjust themselves and reconcile themselves to the new situation. Straightway from marumakkathayam to makkathayam, as Mr. Velu Pillai put it, you are working out a revolutionary change in the social condition of non-Nayars who are particularly not makkathayees. The House owes a solemn duty and a very great duty to those who are in the minority and who cannot express themselves satisfactorily. The House should see that the vested rights and interests of others who are entitled to a share in the property are not seriously jeopardised. I have given notice of some amendments. I will try to move my amendments with a view to have them incorporated in Mr. Narayana Pillai's amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That might be done now.

MR. V. SUBBA AIYAR (*Addtional Head Sirkar Vakil*): I am only making general observations.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): What are those vested rights that he spoke of?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I did not use the word 'vested' in the highly technical sense. Just as it is the obligatory duty of a male to protect his wife and children, it is his duty to protect other members of the family also. It was in that sense and not in any other sense which the law is cognizant of, that I used it.

I will take the case of a Brahmin who has a Nayar wife and children and also a caste son. If his caste son is divided from him—sometimes it so happens—and if the father dies, that son will not be entitled to the father's property though he is a caste son, though he may under the Hindu Law be the sole heir to the property. According to Mr. Narayana Pillai, the Nayar wife and children should take the whole of the property left by the non-Nayar. It will be conceded that it is the obligatory duty

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of the divided son to perform all the funeral rites and *sraddha*. I do not attach any value to the observations of Mr. Hoogewerf, who cannot know anything of Hindu Sastras, and who asked why these rites should not be performed by the Nayar children! That the caste son who is under an obligation to discharge these duties should not be allowed to have anything, and that the Nayar wife and children should have the whole of the property is, I may say with all deference to my friend Mr. Narayana Pillai and with all humility, rather too much for persons like myself to accept.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): Are there not many members in non-Nayar families, particularly the junior members, who do not own property?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May be so.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): Then who would perform their *sraddha*?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In the case of makkathayees, the sons are bound to perform the *sraddha*. If they do not, they will be ostracised from the community. It is obligatory upon them.

When we try to legislate we ought not to rake up these religious usages and rites; we ought not to interfere with the personal law of other communities; we must try to progress slowly and legislate along the line of least resistance, as Mr. K. Parameswaran Pillai put it.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I ask Mr. Subba Aiyar what, according to him, would be a reasonable time when we can expect such provision being passed without any resistance?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Probably you may not be able to get the whole of it at any time. Unless you change by an edict that henceforward all the caste wives should be treated as Nayar wives, and that they should be governed by this law, I do not think there is ever any possibility of the Nayar wife and children getting the whole of the property. Whatever is reasonable—whatever will be considered reasonable for the maintenance of the wife and children—is allowed by the present Regulation. And even for a few months more until this Bill becomes law it will be considered enough. The present Bill says that one-half alone need be given. If that is so, I ask, why should we not try to proceed slowly and to the extent which will be acceptable to all communities, *viz.*, a definite share in the property, instead of amending the law to the effect that under certain circumstances the nearest personal heirs of the non-Nayar will not be entitled to any inheritance. In the case of certain non-Nayar wives, it will not be possible for them to inherit anything from their husbands or father. We have to take that seriously into consideration in the case of

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the Kshatriya community. Their sisters and their nephews will not get anything from their husbands and their fathers. It is absolutely necessary to see that their interests are not jeopardised. Till the time their husbands also are compelled by law to pay something to their Kshatriya wives and children, we will not be justified—

MR. A. HOOGEWERF (*Nominated*): Why not we pass a law providing for registered marriages?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*: If a member brings forward a Bill for civil marriage law it will be time to consider the question of registry of marriages. Till then the present law will have to continue.

I have sent in a list of amendments and I think it will be better to put in my amendments into this Clause. I wish to move them now so that it may not be said when this Clause is passed that my amendments were not brought forward in time.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Unless my amendment is carried, is it possible to put forth his amendments?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): When I raised my technical objection I understood my friend to say that it would be possible to move amendments to his amendments.

PRESIDENT: Amendments have been moved to amendments and they have been discussed. Mr. Subba Aiyar may move his amendments.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will try to bring in one after another my amendments with a view to bring them into conformity with what I consider to be the right thing. In the first place, in Mr. Narayana Pillai's amendment after the words "non-Nayar male" occurring in the first line, I will say: insert the words "contracting a marriage with a Nayar female after the commencement of this Regulation and."

PRESIDENT: So far you have been stating your objections to the words "undivided heirs."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): We want to go on from line to line.

PRESIDENT: Yes; Mr. Subba Aiyar may move his amendments one after another.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, the significance of my amendment is that the Clause should not apply to the existing marriages. In moving this amendment I am supported by the procedure in this Council itself.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I suggest to Mr. Subba Aiyar, if he wants to put this as an amendment, why not put it in the form of a proviso?

PRESIDENT: I do not think that there is any objection to the present form. It reads all right so far as I can see.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In the first place I rely upon the circumstance that we should try as far as possible not to give retrospective operation to the law. Mr. Narayana Pillai said the succession was going to open later on, after the passing of this Regulation. But that is not so. It is intended to apply to existing contracts of marriage. Much was said that inasmuch as the legality of the marriage was admitted the necessary consequences of such marriage should follow. I say whatever we may do with future marriages we should not interfere with existing marriages and impose an obligation upon the parties to such marriages, which was never contemplated and which was not intended to be given effect to. In this connection I may quote the opinions expressed by the marumakkathayam Committee. When the Committee took evidence it was thought that non-Nayars should also be inculded in the Bill; and to what extent their rights should be infringed or affected was also considered by the committee. The committee in their report gave a definite assurance, I would say, to the non-Nayars contracting such marriages. It is our duty to see that such pledges as were confirmed by Regulation I of 1088 are not in the least interfered with and that the promises given are not broken. My humble opinion is that there will be strictly speaking a breach of faith.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): May I ask whether the Council in which that Regulation was passed made any such assurance?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am coming to that. Sir, at page 13 of the Marumakkathayam Committee's Report, this is what is said:—

"The higher sub-divisions of Nayars (Kiriyam, Kaimal, Kartha) who are descendants of former chieftains and Sthanees and also many respectable Illam Nayars marry their ladies only to Brahmins (Nambudiries and Potties) the junior members of whose families consort only with Nayar females according to caste rules (anacharams) prescribed by Sankaracharya, though recently the Madras High Court has decided that junior members of Nambudiri Illams are not prohibited by law or customs from contracting valid marriages in their own community."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): How many members? Please state the number.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The number is not stated. I am only reading from the report:

"Even if such unions should be discouraged, as a few of the witnesses seemed to think, the great majority of the high—caste Nayars above alluded to are for retaining them even without inheritance of the husband's self-acquisitions by the children. Whatever may be the correct view on the question of desirability of such unions, the result of not giving legal recognition to them would be the bastardizing of numerous high—caste members of the Nayar community."

Even though inheritance was not thought of, it was understood that legalising the marriage was absolutely necessary in the interests of the Nayar community.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is there not a dissentient view to the Majority Report?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Mr. K. P. Padmanabha Menon was the one dissentient. I am reading from the Majority Report.

Later on, at page 31, they say:—

"With regard to the first contention, it must be noted that the power of Brahmins to dispose of their self-acquisitions as they like, exists only up to their death, but on their death their personal law comes into operation, and the giving away of the acquisition to persons not recognized by that law, is an interference with the personal law of the Brahmins. The second contention ignores the fact that the caste of the Kshatriya is as much a part of his personal law as his law of inheritance; and though he follows marumakkathayam the succession of a Nayar to his property will be as much an interference with his personal law as in the case of Nambudiries of Paiyanur Gramam who also follow marumakkathayam. To interfere with caste rules is to interfere with religion which the legislature has never assumed power to do. The utmost it can do is not to emphazise caste distinctions by preventing the fusion of castes in the process of social evolution. Such fusion, though in active operation now between subdivisions of the same Sudra caste, is as yet a far remote contingency as between that and the higher castes. It is true that Sambandhams do take place between males of these castes and Nayar females, and in the case of some Nayar families in the Quilon and the Kottayam divisions, Sambandhams are performed only by "Dwijas" (Brahmins or Kshatriyas), because they think it degrading to marry Sudras; and they never think of claiming any share of the properties of the Dwijas though such husbands do make provisions for their Nayar wives and children. The sanctity thus attached to a union of this sort has made it a necessity in many cases and Mr. Raman Pillai remarks that such Sambandhams are really not "invasions" but "invitations." We can offer only one of two alternatives to such families, *viz.*, either to give up such "invitations" and perform Sambandham with their own castemen which, we learn, is not impossible, or to be satisfied with the maintenance which we propose to allow in the case of such unions also."

So that, it is distinctly stated that in such cases where the marriage was legalised it was intended not to confer a right of inheritance. It was intended to confer only a right of maintenance. That was passed by Regulation I of 1088. I may draw the attention of the House to the fact that though it was distinctly said that, in the case of the Nayar male, the Nayar wife and children would be entitled to a definite share of the property, in the case of the non-Nayar husband no such thing was stated. No right of inheritance was intended to be bestowed upon the Nayar wife and children on the property of the non-Nayar and a right to get maintenance was considered enough. Thus, we find in the Maintenance Chapter that any husband, whether he is a Nayar or a Non-Nayar, was required to maintain his Nayar wife. When Mr. Govinda Menon asked me if there was anything in the Council Proceedings to denote that, I must answer him by saying that when a Council was prepared to accept and give effect to those provisions it was sufficiently clear that that report was taken into consideration and their suggestions were accepted.

MR. A. GOVINDA MENON (*Alangad cum Parur*): Were all the views expressed by the committee given effect to by the Council?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We are only at this point. It is perfectly irrelevant for our purpose to consider whether all the views were given effect to. The views of the

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[Mr. V. Subba Aiyar.]

committee on this point were accepted by the Council. Mr. Govinda Menon's question only strengthens my argument. The Council did not blindly adopt the proposals of the committee. Whatever provisions were necessary were accepted and whatever were not necessary were rejected. As this provision was found necessary, it was incorporated in the Regulation. So that, there was a distinct assurance given. What I wish to impress upon the House is that the Nayar wife and children are under the present conditions not entitled to inheritance. But, as a matter of fact, many a non-Nayar husband has given property to the non-Nayar wife and children.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): How many? Has he got statistics on the subject?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There are many. I know personally there are many. Those who were willing to give have given. All that I ask is whether you are prepared to take into consideration all such instances. All these marriages were contracted on the distinct belief that the wife and children were not entitled to any inheritance after the death of the husband. Therefore, there is absolutely no impropriety, no injustice and no inconsistency whatsoever in making the law applicable to future marriages. In the face of the report of the Marumakkathayam Committee, and the law that has been passed according to their suggestions, I beg to say that there is nothing implied which would mean that the Nayar wife and children shall get a share of the property. If we pass the law and it comes into force when the Bill receives His Highness the Maha Raja's assent, any person who enters into marital union will have to do so with open eyes, and the whole of his self-acquisition should go to the Nayar wife and children if we so provide, as he has contracted the marriage knowing what the law is. But on the other hand, after having given that assurance to his personal heirs, who could expect, and who have been made to believe that they can expect something from their Karnavan, brother or uncle or whomsoever that may be—I say it will be cruel to deprive them of what they expect. There are very many Kshatriya females who can marry only Brahmins—and very poor Brahmins too. The husbands are brought and maintained by the wives. What are we to do with such women and their children if the whole of the self-acquisition of the male member of the family is to go to his Nayar wife and children? We know as a matter of fact that many families are very very poor indeed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Have not many families pensions from the Government?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I dare say they may have. I have not travelled very far from Quilon, and Mr. Narayana Pillai, belonging to Central Travancore, must have known many pensioners and their condition—and their deplorable condition now. It may not be possible for them to give anything to their sisters

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and their children if the amendment is passed. The male members may get educated from the tarwad funds as Mr. Velu Pillai put it, and if, in such cases, occasionally, one man acquires property, to say that the whole of that property should go to the Nayar wife without leaving anything to the other relations of the acquirer, though the other relations according to custom are bound to offer funeral rites and oblations, and when in their turn they are not in a position to expect anything from their father—I say it will be an injustice to those communities concerned. We are not to be guided by the fact that they are in the minority. It is our obligatory duty to look after the interests of the minority communities whose voices cannot be heard in this Council. In the case of the Nayar wife and children, where the husband is also a Nayar, if the nephews do not inherit anything from their uncle, they may get something from their father. But I ask, are you making any provision with regard to Kshatriya women and their nephews who are not Nayars and who do not inherit from their father but only from their uncle? Therefore, Sir, justice, equity, reasonableness, and I may say, consistency, require that we should make the law so as not to affect existing marriages but only those marriages contracted after this Regulation comes into force. With these words I beg to move my amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Sir, I second the amendment. I am afraid I may take up some time to finish my speech. There is no chance of our finishing the discussion to-day. I want, if the session is to be adjourned now, to save the right of having my speech in seconding the amendment at the adjourned sitting. I submit this lest at the adjourned sitting it should be said that I have already spoken and that therefore I am not entitled to speak on the amendment. I place myself unreservedly at the hands of the Chair. If I am called upon to continue the discussion I am willing to do so.

PRESIDENT: I do not see any chance of this amendment being disposed of to-day. I am sure many members will have to speak.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I can very well anticipate it from the fire and fury—

PRESIDENT: We will stop now.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I take it, Sir, that I have not lost my right of speech.

PRESIDENT: You may second the amendment afterwards.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR (*Ag. Principal, Training College*): Somebody else who does not want to speak on it may second the amendment.

PRESIDENT: Mr. Krishna Aiyangar will second it again and ask when the Council next meets.

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[President.]

Before we disperse, I have to make a statement to the Council in regard to a representation * made by some of the members of the Council that there is some difference between the preliminary and the final editions of the report of the proceedings of the Council, dated the 10th August, 1923, as to what took place between Mr. K. V. Rangaswami Aiyangar and the late Mr. K. P. Raman Pillai and that what is contained in the preliminary edition should be restored. The preliminary edition is based upon the short-hand notes taken by the official reporters. As the members are well aware, the reporting here cannot be said to have attained any degree of perfection. With a view, therefore, to enable the members to see whether the reporting is correct and to make corrections where they consider necessary, the preliminary edition is sent to them. Not infrequently, the members make corrections and edit their speeches. The preliminary edition cannot, therefore, in the existing state of affairs, be regarded as authoritative.

The letter to which reference has been made at the beginning refers to the difference between the preliminary and the final editions in the reports of the speeches of Messrs. K. P. Raman Pillai and K. V. Rangaswami Aiyangar. The revision of his speech made by Mr. K. V. Rangaswami Aiyangar has to be accepted, just as it has been done in the case of revisions made by other members. In the situation created by Mr. Raman Pillai's lamented death, which prevented the report of his speech receiving the benefit of his editing, it became necessary to edit that speech to prevent its being inconsequential. It is unfortunate that there should be a difference of opinion as to what exactly was said by Mr. Raman Pillai, but in view of the fact that the final edition has been issued, it is neither desirable nor feasible to enquire as to what exactly were the words used by Mr. Raman Pillai, and it will, I think, be conceded that any such attempt in that direction will be beset with difficulties and will set up an undesirable precedent. There does not seem to be any precedent anywhere for interfering with the proceedings after they are finally published (except of course in the case of printer's mistakes). The only thing that could be done in these circumstances is to incorporate the representation of the members and this reply of mine in the proceedings of the Council.

This session of the Council is prorogued. I need not remind the House that all motions and interpellations now outstanding will lapse.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know if the amendments to the Bill also lapse?

PRESIDENT: Of course, the amendments will lapse excepting those that are now under discussion. Therefore fresh notice will have to be given of further amendments.

The Council was prorogued at 5 P. M.

* *Vide* appendix, IX—page 1273.

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Appendix IX.

REPRESENTATION MADE BY SOME MEMBERS OF THE COUNCIL IN *re* DIFFERENCE BETWEEN THE PRELIMINARY AND THE FINAL EDITIONS OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL DATED 10TH AUGUST 1923.

Trivandrum,
2nd November, 1923.

To

The President,
The Legislative Council.

SIR,

We find published in the Travancore Legislative Council Proceedings, Vol III, No. 8, a version of the unfortunate incident between Messrs. K. P. Raman Pillai and K. V. Rangaswami Aiyangar, different from the one published in the preliminary edition of the proceedings. As far as we remember the incident was correctly reported in the preliminary edition. We may mention one or two instances in which the final report substantially varies from the preliminary report. While Mr. Rangaswami Aiyangar wanted himself to be called "Rangaswami" as reported in the preliminary edition, the final edition says that he wanted himself to be referred to as "Mr. Rangaswami Aiyangar" and that he stated that, if that word was too long, Mr. Madhava Variar could call him "Rangaswami." Another instance is the statement in the final edition that Mr. Raman Pillai said that he would persist in calling him "Mr. Rangaswami." He did nothing of the kind as can be seen from the preliminary edition. In these cases we are sure that the final report is incorrect. We feel it our duty therefore to request you to restore the correct version and thus give a faithful representation of what occurred in the Council between these two gentlemen.

We beg to remain,
Sir,
Your most obedient servants.

1. M. R. Madhava Variar,
2. A. Govinda Menon,
3. A. Hoogewerf,
4. M. N. Pillai,
5. P. K. Narayana Pillai,
6. T. Kumara Pillai,
7. K. Parameśvaran Pillai,
8. N. Ramakrishna Pillai,
9. T. Lakshmana Pillai,
10. K. C. Mammen Mappilli,
11. C. P. Kochukunju Pillai,
12. G. Parameśvaran Pillai,
13. C. Ramankunju,
14. N. Padmanabha Pillai.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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